Petition

81-1418

Office - Supreme Court, U.S.
FILED
DEC 23 1981
ALEXANDER L. STEVAS,
CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1981

No.

QUALITY AUTO BODY, INC.,

Petitioner,

vs.

ALLSTATE INSURANCE COMPANY and STATE FARM AUTOMOBILE INSURANCE COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PAUL T. KALINICH
KALINICH, MCCLUSKEY & MEHLING
800 Roosevelt Road, Bldg. A
Glen Ellyn, Illinois 60137

The Scheffer Press, Inc.—(312) 263-6850

QUESTION PRESENTED

Section 1 of the Sherman Act prohibits combinations and contracts in restraint of the trade. The question presented for review is whether State Farm and Allstate adjust property damage claims in such manner that they effectively fix the price which Quality may charge for labor and materials, when it engages with the carriers' insureds to repair their damaged automobiles.

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
OPINIONS BELOW	1
JURISDICTION	2
STATUTES INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	7
I. The Decision Below Involves The Important Question As To Whether Vertical Arrangements Between Insurers And Preferred Body Shops Which Rigidly Set The Price Of Repairs Violate Section 1 Of The Sherman Anti-Trust Act	7
II. Injunction Is A Proper Remedy To Cure The Wrong Complained Of	12
CONCLUSION	14
APPENDIX A, Opinion of the United States District Court for the Northern District of Illinois, August 19, 1980	1a
APPENDIX B, Opinion of the United States Court of Appeals for the Seventh Circuit, September 24, 1981	8a
APPENDIX C, Judgment of the United States Court of Appeals for the Seventh Circuit, September 24, 1981	28a

TABLE OF AUTHORITIES

CASES

	PAGE
Dr. Miles v. *Park & Sons*, 310 U.S. 150 (1939)	9
Group Life and Health Insurance Co., a/k/a Blue Shield of Texas, et al, v. *Royal Drug Co., Inc., d/b/a Royal Pharmacy of Castle Hills, et al* (C.A. 5th Cir.) 440 U.S. 205 (1979)	7
National Society of Professional Engineers v. *United States*, (C.A. D.C. Cir.) 435 U.S. 679 (1978)	12
Northern Pacific Railway Co. v. *United States*, 356 U.S. 1 (1957)	12
U.S. v. *Masonite*, 316 U.S. 265 (1942)	8
United States v. *Socony Vacuum Oil Co., Inc. et al.*, (C.A., 7th Cir.) 310 U.S. 150 (1939)	9

STATUTES

Sherman Act § 15, U.S.C. 1	7

TABLE OF ABBREVIATIONS

AIC#	Allstate Insurance Co. Document
Aff	Affidavit
App	Appendix
Dep	Deposition
Rec.It.#	Record Item Number
S#	State Farm Mutual Insurance Co. document attached to Rec. It. 53

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No.

QUALITY AUTO BODY, INC.,

Petitioner,

vs.

ALLSTATE INSURANCE COMPANY and STATE FARM AUTOMOBILE INSURANCE COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Quality Auto Body, Inc., petitions for a writ of certiorari to review the judgment of the United States Court of Appeals in this case.

OPINIONS BELOW

The opinion of the United States District Court for the Northern District of Illinois, Eastern Division is annexed hereto as Appendix A and is reported at 1980-2 Trade Cases # 63,507. The opinion of the United States Court of Appeals for the Seventh Circuit is annexed hereto as Appendix B and is unreported as of this date.

JURISDICTION

The judgment of the Court of Appeals was entered on September 24, 1981. The jurisdiction of the Court is invoked under 28 U.S.C. Section 1254(1).

STATUTE INVOLVED

15 U.S.C. Section—Every contract combination in the form of a trust or otherwise conspiracy, in restraint of trade or commerce among the several states or with foreign nations, is hereby declared to be illegal.

STATEMENT OF THE CASE

Quality Auto Body, Inc., the Petitioner, operates an automobile body repair shop in Westmont, Illinois. Allstate and State Farm, Respondents, insure the owners of automobiles against loss resulting from damage to their vehicles.

Petitioner's antitrust action for injunctive relief only challenges Respondents' manner of adjusting the loss.

Typically, the owner of a damaged automobile contacts Quality. Quality may make an initial estimate of the extent of the damage and in so doing will determine: (a) the parts that must be repaired or replaced; (b) the number of hours required to repair or replace the damaged parts; (c) the hourly charge for labor; (d) the charge for parts. As an alternative, Quality may already have an estimate from Allstate's or State Farm's adjuster. In fact, most damage claims are handled initially at the carrier's service center (Goetchel & Peterson Aff. p. 3 Rec. It. 25&26). Regardless of the sequence of events, the Carriers's estimate in each instance is specific in: (a) the dollar amount to be paid by the

Carrier for each part to be replaced (including a required percentage of discount to be allowed to the Carrier) and (b) the dollar amount to be paid by the Carrier for each hour of labor required to replace or repair parts. (See State Farm and Allstate estimates. Rec.It. 53)

Both companies maintain some form of "preferred shop" or "competitive shop" list. (S0005528-32, AIC 000-102128, AIC 000-102165-67). (Rec.It. 53.)

Prior to this litigation being instituted, Allstate had what it called a "competitive shops policy" whereby each district unilaterally identified a number of repair shops which offered "competitive parts prices and labor rates." (Rec.It. 24 pp. 609) Allstate, in turn prepared all of its own estimates utilizing the "competitive shop" prices. The "competitive shop," while not contractually bound to do the job at the quoted price, could not undertake work unless: (a) it agreed to do work at the generally quoted price, or (b) the insured agreed to pay a greater rate or price out of his own pocket. Allstate, in turn, directed its insureds to the body shops on "the competitive shop" list if the owner indicated no preference. If the owner indicated a preference for a particular shop, that shop would be required to work at the "competitive rate" or the owner had two alternatives: (a) pay the difference, or (b) remove his car to a competitive shop. If the car owner had his repairs performed at the "competitive shop," Allstate would guarantee the work. It would not guarantee work at a "non-competitive" shop. In August 1979, the "competitive shop" program was abandoned (AIC 102047) Rec.It. 53). Thereafter, rather than being operated on a region

or district-wide basis, the individual adjusters were directed to identify competitive shops on their own. This program is called the "friendly shop" program. (Dep. of Popolo, p. 28).

For several years, Allstate has also maintained a "Direct Shop" program. For the most part, the former "competitive shops" and the "Direct Shops" are the same. The Direct Shop Program has not been abandoned. Under this program, Allstate maintains a list of shops in the area, each of which agrees to charge as follows:

(a) Labor—$14.00/hr.
(b) Parts discount—15%
(c) To use used parts "when applicable" and to charge 10%-15% over cost.
(d) To bill glass damage directly through Action Glass.
(e) To bill tires directly through Chicago Tire at dealer's cost.
(f) To bill batteries directly through Chicago Tire.
(g) To settle minor damage for cash, usually $10.00 to $20.00.

These and other terms are spelled out in documents entitled "Direct Repair Program Guideline and Agreement." (AIC 102212-3, Rec.It. 53.). Shops which agree to do business according to this document enjoy the privileges which no other shops can claim, to wit: commencing repairs without waiting for Allstate personnel to adjust the claim; receiving payment as soon as they send the estimate to the Allstate office; and, lastly, the customer receives a guarantee for any work done by a Direct Repair Shop. A special log book must be kept

by Direct Repair Shops in connection with all work done for Allstate (AIC 101 433-36, AIC 102 212-13, Rec.It. 53; Popolo Dep., p. 38).

There is no set procedure whereby Allstate determines the "prevailing competitive price." It is based on feedback from Adjusters, including what other carriers are paying. The District Manager subjectively evaluates the feedback and asks the Illinois Region if it can increase prices (Popolo Dep., pp. 12-23).

The garage survey is the sole basis for calculation by State Farm of the Prevailing Competitive Price for parts and labor. (Aff. of Hoyert, Rec.It.32, p.6). State Farm presents its insureds with a detailed appraisal of damage and cost of repairs based on this "prevailing competitive price." If the insured selects a garage, that garage can charge no more than the price as determined by State Farm. Otherwise, the owner can pay the difference or remove the car to a "competitive shop." State Farm provides its insureds with names of competitive shops. The only criteria for a shop to be recommended by State Farm is: (a) location; and (b) price. (Hoyert Aff., Rec.It. #32, p. 10)

Nationally State Farm ranks number one and Allstate number two in automobile property damage insurance. Together they handle more than one-fourth of the industry total. (App. B., p. 21a)

The case was decided in the District Court under cross-motions for summary judgment. The District Court held that there was no evidence of any agreements between the carriers and thus there was no horizontal price fixing. As to the charges of vertical price

fixing, the Court assumed that each of the defendants had entered into provider agreements with certain preferred shops regarding the price for repairs. After reviewing these agreements under an undefined rule of reason, the trial court held that the agreements do not violate the Sherman Act. Thirdly, the Court held that there was no illegal boycott of Petitioner by the Respondents.

The District Court granted summary judgment to Respondents and denied Plaintiff's cross-motion for summary judgment.

Using essentially the same reasoning, the Court of Appeals for the Seventh Circuit affirmed.

REASON FOR GRANTING THE WRIT

I. The decision below involves the important question as to whether vertical arrangements between insurers and preferred body shops which rigidly set the price of repairs violate Section 1 of the Sherman antitrust act.

The Court of Appeals has decided an important question of federal law which has not been settled by this Court. The question as to whether or not Provider Agreements were exempt from operation of Section 1 of the Sherman Act first came to this Court in *Group Life* v. *Royal Drugs,* 556 F(2) 1375 (5th Cir 1977) aff'd 440 U.S. 205 (1979). This Court held that Pharmacy Agreements were not exempt because of the McCarren Ferguson Act and that case is still pending on remand in the District Court.

Provider Agreements are the vertical arrangements by which mass buyers of goods and services deal with pharmacies, body shops, doctors, lawyers and dentists to carry out the benefits obligations of insurers to their insureds or associations to their member. The individual providers of goods and services are subject to rigid insurer's controls over the dollar amount that their insureds may receive as reimbursements under their insurance policies. This is especially so in the body repair business. (S. 6273 Rec.It. 53, Popolo Dep. 73). The two Respondents are national companies with a substantial percentage of the total insurance business. Each utilizes uniform policies of settling claims. Although they differ from one another, they are the same

in one essential respect. Before the insured even deals with the body shop, or in fact before he ever suffers a loss, the amount he may receive by way of reimbursement is limited because the carrier has rigidly fixed the maximum hourly rate for labor and a required percentage of discount for parts.

The carriers enlist the assistance of certain preferred shops to enforce prices. In the words of District Judge Decker:

> "The Court would be blind to economic reality if it did not recognize that the policies of the Defendants well known to every body shop create powerful incentives to adhere to the company guidelines. Vertical arrangements between the insurer and body shop exist." (App. A, p. 3a)

Even though each preferred shop may act individually with the carrier similar agreements to sell at a set price have been held to be illegal.

In *U.S.* v. *Masonite*, 316 U.S. 265 (1942) agency agreements to sell Masonite products at a set price were held to be per se violations even though each distributor acted independently and negotiated only with Masonite.

> "It is not clear at what point each appellee became aware of the fact that its agreement was not an isolated transaction, but part of the larger arrangement. But it is clear that as the arrangement continued, each became familiar with its scope and purpose." p. 275

The Respondents' unlawful conduct is simply the inducement of and participation in a series of tacit vertical price fixing agreements. The acquiescence of the

preferred shops induced by a refusal to deal except on fixed terms is more coercive than a written contract[1] where the price setter is so powerful that he does not need the assurance of a written agreement. The Respondents (Buyers) have substantial market power and the Petitioner (Seller) has little or no market power. App. B., p. 21a-22a. The Court of Appeals considers this the Darwinian working of competition (which the antitrust laws are presumably designed to foster). (App. B., p. 27a). How can an absolute set price foster competition? Allstate raised its hourly rate from $12.00 per hour to $14.00 per hour even though it could get all the shops it wanted at $12.00 per hour. (Popolo Dep. p. 18). When Allstate acts against its own apparent self interest it is evidence neither of an independent decision of the carrier nor of the "the consumer's best interest." (App. B., p. 27a).

Petitioner knows that he won't be able to sell his goods and services to the automobile owner unless he adheres to the rigid price dictated by the carrier. The preferred shop has become a preferred shop because it has pre-arranged with the insurer to sell its goods and services to the automobile owner at a fixed price. In the classic type re-sale price maintenance case, the manufacturer dictates as a condition of a distributorship the price at which re-sales may be made. *U.S.* v. *Socony Vacuum Oil Co.*, 310 U.S. 150 (1939), *Dr. Miles* v. *Park and Sons*, 220 U.S. 373 (1911). In the instant case the

[1] Allstate has written agreements with its direct repair shops, which are the same as its preferred shops. State Farm has no written agreements with its preferred shops. (AIC 102212-3, Rec.It. 53).

difference is only on the surface. The insurer in reality dictates the price at which the body shop owner may sell its goods and services to the car owner. This is not essentially different from the situation in which an oil company might dictate re-sale price to its dealers, or the drug manufacturer does the same with its retailer.

As an additional inducement, the "preferred," "direct repair," and "competitive shops" varyingly enjoy certain other competitive advantages over Petitioner's shop. Business is referred to them by the carrier; their work is guaranteed by the carrier; and they can commence work before the damage is examined or adjusted.

Besides inducement, threat is not unknown. In a letter to its competitive and direct repair shops in the southwest metro area, Allstate first stated that there can be no deviation in the final dollar amount of the shop's estimate from the Allstate estimate. After outlining steps to be taken in making estimates, the writer interjects the following admonition:

> "Prior to doing the above, please give consideration to the total dollars paid to you by Allstate in the course of the year. If you need the additional dollars to meet your required per cent of profit then follow the above instructions." (Rec.It. 53)

Even though *Group Life* supra came to this Court on the question of McCarren-Ferguson exemption, the Court of Appeals gave substantial indication of its construction of provider agreements in both the pharmacy and body repair business:

> ". . . we find that the agreements between Blue Shield and Participating Pharmacies do not require

Blue Shield to fix prices or to produce other anti-competitive effects in the pharmaceutical. . ." (Id., p. 1381)

". . . If the challenged activities in this case are held to constitute the business of insurance, they contend, then automobile insurers will be able to utilize Participating Repair Shop Agreements and coercion to fix prices for parts and labor in the automobile industry. . ." (Id. p. 1381).

"We conclude that Blue Shield is no more obligated to fix the retail prices of pharmaceutical than an automobile insurer is obligated to its insured having deductible policies to fix the prices charged for parts and labor. Just as the automobile insurer is obligated to pay the cost of repair, whatever it might be, over and above the applicable policy deductible, Blue Shield is obligated to pay the cost of prescription drugs over and above the two dollar ($2.00) drug deductible. Even though an automobile insurer might be able to guarantee by contract that repairs are done for its customers on a "cost" basis, thereby achieving increased profits or reduced rate, such agreements do not thereby become immune from "antitrust scrutiny"." (Id. pp. 1381, 1382)

"We find that the Pharmacy Agreement goes beyond Blue Shield's obligations as an insurer and places the firm in the business of providing products and services. Blue Shield has agreed to provide protection against the risk that a policyholder will require pharmaceuticals. In order to meet that obligation, Blue Shield is not required to guarantee the provision of services on a "cost-plus" basis or any other basis which might be more economical than the retail pruchase of such products. That Blue Shield may wish to protect itself and its customers from rising costs in the pharmaceutical industry does not transform the Pharmacy Agree-

ment into the business of insurance. In fact, the best way for the firm to protect itself from rising costs is to establish and periodically adjust its rate structure to reflect the impact of inflation. Such measures, which are by no means foreign to the insurance business, involve far less intrusion into the pharmaceutical industry and, consequently, avert the potentially anticompetitive effects alleged here." (Id., p. 1382)

". . . it is not the office of the insurance industry to set the prices in the various sectors of our economy so that insurers will enjoy an added measure of control over the magnitude of individual claims." (Id. p. 1384)

II. Injunction is a proper remedy to cure the wrong complained of.

The Petitioner does not propose that the Respondents pay its price whatever it may be.

This Court has rejected the argument that competitors may lawfully agree to sell their goods at the same price as long as the price is reasonable or the argument that because of special circumstances of a particular industry monopolistic arrangements will better promote trade and commerce than competition. *National Society of Professional Engineers* v. *U.S.*, 435 U.S. 679, 689 (1978). Per se violations of Section 1 are agreements or practices which because of their pernicious effect on competition, are conclusively presumed to be unreasonable and therefore illegal and it is unnecessary to have a trial to show the nature, extent and degree of the market effect of the per se violation *Northern Pacific Railway* v. *U.S.*, 356 U.S. (1957).

In a free market neither the Petitioner nor the Respondents would rigidly pre-determine the price of repairs. The reasonable cost of repair and replacement would be determined through a free exchange between the person whose car is damaged and the body shop. If the person who seeks to have his auto repaired chooses a shop which charges more than the Respondents claim is the reasonable cost of repair, the carrier and the shop owner would still be free to haggle, arbitrate or sue. As it stands now, the price of repairs is pegged by the carrier before the damage is even suffered, and that pricing policy is rigidly enforced. A per se violation exists.

An injunction would be adequate if it ran against any agreements, tacit or express, between the provider and the purchaser of repairs at a fixed or pegged price.

CONCLUSION

The Federal Courts are being burdened with a profusion of antitrust cases involving provider agreements. This Court ought to determine whether the carriers prevent fair and free negotiations of prices for goods and services in violation of the antitrust laws. The profusion of cases promise to provide an incredibly complicated and prolonged economic investigation into the entire history of not only auto body repair insurance but also the various other provider insurance businesses in order to determine whether each particular restraint is unreasonable. If this Court believes that the practices of the carriers under each provider agreements must be examined to determine whether individual practices, on balance, have a negative impact on competition certiorari ought to be denied. If on the other hand this Court believes that the legality of rigid pricing policies of mass purchasers of goods and services under provider agreements, essentially similar, can be determined on their face, certiorari should be granted.

Respectfully submitted,

Paul T. Kalinich
Kalinich, McCluskey & Mehling
800 Roosevelt Road
Bldg. A, Suite 106
Glen Ellyn, Illinois 60137

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NO. 79 C 3351

QUALITY AUTO BODY, INC.,

Plaintiff,

-vs-

ALLSTATE INSURANCE COMPANY,
et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Quality Auto Body, Inc., the plaintiff in this antitrust suit, is an auto body repair shop in Westmont, Illinois. Defendants are insurance companies that write policies covering automobile collisions. The complaint alleges that defendants' procedures for writing estimates for the repair of damaged vehicles effectively fix the price at which repairs are made. In addition, the defendants are charged with maintaining lists of body shops that will perform repairs for the rates they establish. This practice is said to comprise a boycott of the plaintiff's business, for plaintiff charges a higher price than the one set by defendants. Two of the defendants, Allstate Insurance Company and State Farm Automobile Insurance Company, have moved for summary judgment, contending that on the undisputed facts, no antitrust violation can be shown.[1] Plaintiff has filed a cross-motion for summary judgment, contending that the liability of these two defendants is indisputable.

[1] The other two defendants have both been dismissed: Illinois Farmers Insurance Co. by order of this court dated March 28, 1980, and Aetna Casualty and Surety Co. by order dated June 13, 1980.

Allstate has described the procedures it follows in processing claims in an affidavit of one of its District Claims Managers, Frank Popolo. According to this affidavit, Allstate follows a "shop of the customer's choice" policy. Under that policy, the customer is entitled to have his damaged car repaired at any shop he wishes. Allstate will ordinarily prepare its own estimate of the cost of repair, either at the shop chosen, or at one of Allstate's drive-in inspection stations. Allstate bases its estimate on its own evaluation of the competitive price for making repairs. The competitive price is independently determined by Allstate personnel based on their experience with local shops. The competitive labor rate varies in different areas, and has been adjusted upward as a large number of shops begin to report using a higher rate. As an example of this process, Popolo recounts that in the summer of 1979, the $12.00 per hour labor rate then used became a "source of excessive friction" between adjusters and body shops in his district. When the vast majority of shops reported a rate of $14.00 per hour, with some quoting a higher price, Allstate personnel in his district began using a $14.00 per hour rate in the preparation of their estimates.

In some circumstances, Allstate will negotiate the price with a body shop that has indicated that it cannot do the work for the price set forth in the original Allstate estimate. If agreement with the shop cannot be reached, the customer is still free to deal with that shop. However, the customer must himself make up the difference between the price charged by that shop and the amount paid by Allstate. Popolo states that Allstate has an obligation under the law to identify shops that will perform the needed work for the price indicated on the Allstate estimate. If the customer does not request that the work be done at a specific shop, Allstate will refer him to one that it believes will perform the work at the estimated price. Before August, 1979, referrals were made from lists of shops made up by the District Claims Office, subject to the approval of the Regional Office. Allstate's

present policy is, according to Popolo, to allow individual adjusters to make their own recommendations based on their individual experience and judgment. The shops recommended, under either the old or new system, have not expressly agreed in advance to perform work at the price determined by Allstate, and are free to turn down work or to ask a higher price.

Since 1975, Allstate has also used a "Direct Repair Program," under which certain selected shops are authorized to make estimates without an Allstate adjuster's participation. These shops agree in advance to prepare estimates in accordance with Allstate's guidelines, establishing, among other things, a fixed labor rate and a fixed parts discount. Allstate conducts periodic reviews of shops participating in the direct repair program, and sometimes reinspects work done by those shops. The direct repair program is not, according to the Popolo affidavit, a substitute for the "shop of the customer's choice" policy, but is only used in cases where the customer expresses no preference as to where he would like the repairs done. Popolo can recall no instances in his district where a customer who expressed a choice of shop was directed by Allstate to use instead a shop participating in the direct repair program.

State Farm's claims-handling procedures are in many respects similar to those used by Allstate. These procedures are described in the affidavit of a Property Claims Superintendent, Charles Hoyert. Like Allstate, State Farm allows the customer to choose the shop he wishes for making repairs, but will pay no more than the price indicated in the estimate it prepares. This estimated price is subject to negotiation with the shop chosen by the customer. If the customer requests it, State Farm will recommend a local repair shop which will perform the work at the price in the State Farm estimate. State Farm maintains a confidential garage directory of body shops that it believes will perform work at what it determines is the competitive rate. State Farm's method of deter-

mining the competitive rate is somewhat different from that of Allstate, according to the Hoyert affidavit. Periodically, State Farm personnel conduct a survey of shops in the area, either in person or by telephone. Hoyert described the January, 1979, telephone survey of the shops in his area. Labor rates and parts discounts rates were obtained from 86 shops. It was found that 84 or the 86 shops charged $14.00 per hour or less for labor, and only two, one of which was Quality Auto Body, charged more. In addition, 71% of the shops surveyed offered some discount off the manufacturer's suggested list price for new parts. Quality Auto Body was one of those shops that offered no discount.

For the most part, plaintiff does not dispute the facts submitted by defendants. Its disagreement is with the characterization of these facts; its argument is that an inference of illegal agreements to fix prices and to boycott non-cooperating shops can be drawn from these facts. Plaintiff argues that there can be no dispute that the defendants have each entered into agreements with the body shops on their respective lists of competitive shops. Such agreements are said to be *per se* antitrust violations. Plaintiff further contends that although defendants are obligated under their insurance policies to pay the "reasonable cost of repair or replacement," they will pay only what they claim is the lowest prevailing competitive rate.[2] The defendants' methods, according to plaintiff, result in an artificially suppressed rate for repair. Although plaintiff admits that "[t]here is no evidence of horizontal agreements as such between the Defendants," there is, according to plaintiff, an adherence to a common

---

[2] Plaintiff has no standing to argue that defendants are not fulfilling their obligations under their insurance policies, for it is not a part to these contracts. Moreover, it has been held that insurance companies are entitled to pay only the lowest competitive cost, when their policies obligate them to pay the reasonable cost of services. *See, e.g., Gambale* v. *Allstate Insurance Co.*, 209 Pa. Super. 330, 333; 228 A.2d 58, 60 (1967).

formula. Defendants' knowledge of their competitors' use of this common formula is said to contemplate and invite concerted action with respect to prices. Finally, plaintiff charges that the effect of defendants' practices has been to boycott its shop by withholding or enlisting others to withhold patronage of services from plaintiff. The court must therefore consider, in turn, these three aspects of defendants' practices, and determine whether there are any issues of fact that would warrant a finding of illegality. The court will first discuss the provider agreements allegedly entered into by both defendants, and will then turn to the allegations of price fixing and boycotting.

I. Provider Agreements.

It is helpful to think of the defendants' business as more than merely the spreading of risk among the insured. Companies that offer to reimburse their policyholders for the cost of services needed after an accident can also be thought of as large-scale purchasers of such services. As such, they exert considerable power in the marketplace. Until recently, this aspect of insurance companies' business was thought to be exempt from antitrust challenges by virtue of the "business of insurance" exemption in the McCarran-Ferguson Act, 15 U.S.C. §1011-1015.

In *Group Life & Health Insurance Co. (Blue Shield of Texas)* v. *Royal Drug Co.*, 440 U.S. 205 (1979), the Supreme Court examined a health insurance company's practice of entering into agreements with pharmacies to offer policyholders discount prices on drugs. If the customer wished to purchase drugs from a participating pharmacy, he would have to pay only $2.00, the pharmacy's cost being reimbursed by Blue Shield. A customer who decided to obtain drugs from a non-participating pharmacy would have to pay the full price charged by that pharmacy and would be reimbursed by Blue Shield for only 75% of the difference between that price and $2.00. The Court held that such agreements are not part of the "business of insurance" protected by the McCarran-Fer-

guson Act, and are, thus, not exempt from scrutiny under the antitrust laws. The Court reached this conclusion by construing the phrase "business of insurance" to refer only to arrangements for the "underwriting or spreading of risk." 440 U.S. at 211-214. Provider agreements, on the other hand, are "legally indistinquishable from countless other business arrangements that may be made by insurance companies to keep their costs low. . ." *Id.* at 215. As noted above, the insurance company in entering into such arrangements is functioning more as a purchaser of services on behalf of its customers, than in the traditional role of an insurance company.

The Court in *Group Life* gave no indication, however, whether the same agreements would in fact constitute antitrust violations. Indeed, the Court gave inconsistent suggestions as to whether it was the non-participating pharmacies or consumers who were injured by such a practice. *Compare* 440 U.S. at 213, 216, and 232 *with id.* at 232 n.40. What the Court did decide was that the barrier of McCarran-Ferguson has partially given way, at least as to agreements between an insurance company and the providers of services to the insured.

There can be no question that the decision in *Group Life* is applicable to the facts at hand, insofar as the alleged provider agreements are concerned. *See* 440 U.S. at 232 (mentioning agreements with auto body shops); *Liberty Glass Co.* v. *Allstate Insurance Co.*, 607 F.2d 135 (5th Cir. 1979). There may be a question, however, whether there are sufficient facts before the court to permit a finding that the defendants in this case have entered into provider agreements. In the case of Allstate's direct repair program, such agreements are explicit. State Farm, however, has denied that it has made any advance arrangements with any body shops to perform work at a set price. Allstate has made the same denial with respect to situations where its adjusters merely recommend a body shop to a customer. Plaintiff has not contradicted these showings by competent proof, and the court must therefore assume for the purposes of the summary judg-

ment motions before it, that for the most part, formal vertical arrangements do not exist. A body shop to which an Allstate or State Farm customer is sent is not obligated to perform the work at the price set forth in the insurance company's estimate. The only consequence of a refusal to perform the work at that price is that the customer will have to pay the additional charge himself, and may, as a result, decide to take his business elsewhere.

The court would be blind to economic reality, however, if it did not recognize that the policies of the defendants, well known to every body shop, create powerful incentives to adhere to the insurance companies' guidelines. Body shops know that if they follow the prevailing competitive rate, they can expect to have insurance company work referred to them. These incentives and this knowledge could be said to create informal vertical agreements between the insurance companies and certain body shops. Indeed, it appears that in some manner each insurance company communicates its guidelines to the shops with which it deals, and that shops following these guidelines are rewarded by being placed on each company's list (however informally that list is maintained) of preferred shops. From these facts, the trier of fact could draw the inference that at least some body shops have agreed to perform body work for a set price. Thus, viewing the facts in the light most favorable to the plaintiff, the court will, for the purposes of this motion, assume that informal vertical arrangements, between the defendants and certain "preferred" body shops, exist. Accordingly, these practices, in addition to the explicit agreements that are a part of the Allstate direct repair program, must be scrutinized under the Act.

A contract between a seller and a buyer will not ordinarily be thought to raise antitrust problems unless it contains restrictions on one party's activities other than those involved in the immediate purchase and sale itself. For example, agreements by manufacturers with retailers to control resale prices have been considered *per se* anti-

trust violations. *Dr. Miles Medical Co.* v. *John D. Park & Sons Co.*, 220 U.S. 373 (1911). Similarly, agreements imposing location or territorial restrictions upon dealers have been found illegal under the Sherman Act, although such agreements are tested under the rule of reason. *Continental T.V., Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 36 (1977); *White Motor Co.* v *United States*, 372 U.S. 253 (1963). There can be no question that the agreements in this case are to be tested under the rule of reason as well. These arrangements can be viewed as similar to output or requirements contracts between a manufacturer and a buyer. Obviously, not every such contract is an illegal restraint of trade. *Cf. Chicago Board of Trade United States*, 246 U.S. 231, 238 (1918) (every agreement concerning trade restrains, but is not illegal without further proof of anticompetitive effect).

By means of the agreements at issue, the defendants will not pay a body shop a price higher than what each has determined to be the competitive rate. Such behavior, without more, simply represents the rational action of any buyer in an open market. Any buyer is entitled to avoid sellers who charge a price higher than he is willing to pay. It has been held that even if a company refuses to deal with another for reasons other than its unhappiness with the price charged, no antitrust violation can arise from that conduct alone. *United States* v. *Colgate & Co.*, 250 U.S. 300 (1919) (manufacturer's refusal to deal with wholesalers and retailers who do not conform to its resale price policies is not a Sherman Act violation). Something more than a refusal to deal must be shown. *United States* v. *Parke, Davis & Co.*, 362 U.S. 29 (1960). It follows that a refusal to deal except at a stated price, cannot by itself be illegal.

Other courts that have considered this issue have reached the same conclusion. The court in *Chick's Auto Body* v. *State Farm Mutual Automobile Insurance Co.*, 401 A.2d 722, 731-32 (N.J.Super. Ct.Law Div. 1979), held that "[t]he practice of the insurance companies to calculate the reimbursement for its insured based upon the lowest

prevailing price in the marketplace . . . is the very essence of competition." Similarly, the Third Circuit found that a health insurer's contracts with hospitals limiting the amount the insurer would pay for certain services represented nothing more than the insurer's attempt to "get the best deal possible." *Travelers Insurance Co.* v. *Blue Cross of Western Pennsylvania,* 481 F.2d 80, 84 (3d Cir.), *cert. denied,* 414 U.S. 1093 (1973). *See also, Anderson* v. *American Automobile Assn't.,* 454 F.2d 1240 (9th Cir. 1972); *American Telephone and Telegraph Co.* v. *Delta Communications Corp.,* 408 F.Supp. 1075, at 1101, 1104 (S.D.Miss. 1976), *aff'd,* 579 F.2d 972 (5th Cir. 1978), *modified,* 590 F.2d 100 (5th Cir.), cert. denied, U.S. (1979); *DeBonoventura* v. *Nationwide Insurance Co.,* No. 4098 (Del. Ch. Feb. 15, 1980).

Thus, merely for plaintiff to allege that the defendants have entered into provider agreements with various body shops is not sufficient to state a claim that they have violated the Sherman Act. However, plaintiff's complaint cannot be dismissed this lightly. The Supreme Court in *Group Life* did indicate that such agreements, once they were removed from the McCarran-Ferguson exemption, might have anti-competitive effects. Because the Court did not, however, set out any test for evaluating these effects, it is necessary for this court to construct a theory by which such a determination could be made. Such a theory must begin by referring to the market power of a group of large-scale purchasers of services. Careful exercise of this power leads to savings for the consumer, but its abuse may be a restraint of trade. Although such cases are rare, the courts have made it clear that the antitrust laws reach conspiracies of buyers as well as conspiracies of sellers. *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.,* 334 U.S. 219, 235-36 (1948); *South Carolina Council of Milk Producers, Inc.* v. *Newton,* 360 F.2d 414 (4th Cir. 1966), *cert. denied,* 385 U.S. 934 (1966); *National Macaroni Manufacturers Ass'n.* v. *Federal Trade Commission,* 345 F.2d 421 (7th Cir. 1965.)

The adverse effects on competition that result from a combination of buyers are quite similar to those that result from a combination of sellers. In both bases, unwarranted profits flow to the combination. An internal document obtained from State Farm details the consequences of an artificially suppressed labor rate on the practices of body shops. When the rate is too low, the shops resort to changing for new but using old parts, estimating parts that are not damaged, straightening old parts but charging for new parts, inflating labor hours, billing for repairs that were not performed, and offering rebates and bribes to adjusters. Under such cricumstances, honest shops may be forced out of business.

The question, then, is whether the alleged agreements between each of the defendants and various "preferred" body shops are in fact abuses of the defendants' buying power. The plaintiff should not be required to prove that price fixing conspirators have overwhelming market power, or that the price agreed upon is not a competitive price. *See United States* v. *Socony-Vacuum Oil Co.,* 310 U.S. 150 (1940). This court concludes that the plaintiff's burden of proving that the provider agreements unlawfully restrain trade would be satisfied if it could be shown that there exists a conspiracy between the defendants to fix prices, or a conspiracy to boycott the plaintiff's business, and if the provider agreements are a means of implementing either of those conspiracies.[3] The court also concludes that absent proof of price fixing or of a boycott, the provider agreements are nothing more than contracts between a buyer and a seller determining the price of services that the seller will perform, and are not illegal.

---

[3] The court recognizes that it appears somewhat anomolous that the implementation of a price-fixing scheme by means of provider agreements could be illegal under the Sherman Act, while the price fixing agreement itself may be immune from scrutiny by virtue of the McCarran-Ferguson Act. *See* footnote 4 *infra.* This result, however, appears to follow from the limited exception to McCarran-Ferguson found by the Supreme Court in *Group Life.*

The question of possible price fixing under the admitted facts will be next considered.

II. *Price Fixing.*

Plaintiff has introduced no documents challenging those submitted by defendants, which indicate that there have been no agreements between them regarding the prices they will pay for auto repair services. The affidavits submitted by defendants clearly show that Allstate's and State Farm's decisions setting the level of benefits are arrived at independently. Each company uses a different method for making these determinations—Allstate relying on informal contracts between adjusters and body shops, and State Farm conducting periodic garage surveys. That the labor rate used by the two companies may at times have been the same does not, without more, indicate that a conspiracy to fix prices exists. *See Theatre Enterprises, Inc.* v. *Paramount Film Distributing Corp.*, 346 U.S. 537, 541 (1954) (proof of parallel behavior insufficient, standing alone, to establish Sherman Act violation); *Lamb's Patio Theatre, Inc.* v. *Universal Firm Exchanges, Inc.*, 582 F.2d 1068, 1070 (7th Cir. 1978); *Scranton Construction Company, Inc.* v. *Litton Industries Leasing Corp.*, 494 F.2d 778, 782 (5th Cir. 1974), *cert. denied*, 419 U.S. 1105 (1975).

Absent some evidence of agreement, the explanation for this similarity offered by the defendants—that they have both merely made the same assessment of the prevailing market price—is compelling. Plaintiff's assertion that defendants illegally impose prices on the body shops cannot be accepted without evidence that a conspiracy exists. Plaintiff's admission that there is no evidence of horizontal agreements as such, there being only an adherence to a common formula, amounts to a concession that no price fixing violation can be proved in this case. Plaintiff has failed to show any conspiracy to fix prices.[4]

---

[4] Even if plaintiff had shown horizontal price fixing agreements in this case, it would seem that the McCarran-Ferguson Act would still apply, despite *Group Life.*

III. *Boycotts.*

The final question to be considered is whether plaintiff has presented any facts to indicate the existence of a conspiracy to boycott its business. Although the plaintiff has used the term "boycott", the initial observation can

---

[4] (Continued)

The Supreme Court noted that a primary concern of Congress in passing this legislation "was that cooperative ratemaking efforts be exempt from the antitrust laws." 440 U.S. at 221. Thus, at least some agreements that would otherwise be condemned as price fixing were intended to be immune when engaged in by insurance companies. Agreements concerning the level of benefits would appear to fall into the same category as agreements setting rates. *See id.* at 244 (Brennan, J., dissenting). Such agreements can and should be distinguished from those between insurance companies and providers, which the Court found did not constitute the "business of insurance." In essence, the cooperation among insurance companies alleged in this case merely sets the level of benefits provided to claimants. Defendants will not pay more than the "competitive rate" for repairs. Even if it could be shown that they have agreed on this rate, defendants' conduct would be within the protection of the McCarran-Ferguson Act.

Other courts to consider this question have concurred. In *Proctor* v. *State Farm Mutual Automobile Insurance Co.*, 561 F.2d 262, 267 (D.C.Cir. 1977), *vacated*, 440 U.S. 942 (1979), the D.C. Circuit had no difficulty in finding that horizontal agreements similar to those alleged here were within the scope of McCarran-Ferguson. The court found more difficulty in classifying agreements between insurance companies and providers as being the "business of insurance." It did so find, and it was presumably this latter finding that was vacated in light of *Group Life.* This court regards the *Proctor* court's conclusion that horizontal agreements are exempt from the antitrust laws as unaffected by the Supreme Court decision and still sound. *See also Bartholomew* v. *Virginia Chiropractors Ass'n*, 612 F.2d 812 (4th Cir. 1979); 57 Tex.L.Rev. 1127 *infra*, at 1183-85.

be made that in view of the admitted fact that the defendants will do business with any body shop, as long as the policyholder agrees to pay any price differential, it is difficult to characterize defendants' actions as a boycott, as that term is commonly understood.[5] The court in *Proctor* v. *State Farm Mutual Automobile Insurance Co.*, 561 F.2d 262, at 274-75 (D.C.Cir. 1977), drew a distinction between outright refusing to deal with shops that charge more than the prevailing rate, and merely refusing to reimburse shops for more than the prevailing rate. The former practice, said the court, would state a claim of boycott because it would unnecessarily penalize disfavored shops, and stifle legitimate attempts to increase prices. The latter practice, on the other hand, "merely exerts economic pressure on the shops," and is not illegal. *Id.* at 275. Plaintiff in this case has not introduced documents contradicting defendants' showing that they do not refuse to deal with any shop, and that they deal with all shops on the same terms. In fact, plaintiff admitted that it does a substantial amount of business with both defendants. Plaintiff has undoubtedly lost business because of the defendants' refusals to pay its prices, but that loss is attributable to the willingness of its competitors to perform repairs for less. It is not the sort of loss that the antitrust laws were intended to remedy. *See Chick's Auto Body* v. *State Farm Mutual Automobile Insurance Co.*, 401 A.2d at 730-32, and cases cited therein. *See also, Carlson, The Insurance Exemption from the Antitrust Laws,* 57 Tex.L.Rev. 1127, 1170-76 (1979).

Moreover, even if there were evidence on the record that the defendants have refused to deal with shops

---

[5] It is unnecessary to consider whether the alleged boycotting practices of defendants are protected by the McCarran-Ferguson Act. That Act does not by its own terms apply to agreements to boycott or acts of boycott. 15 U.S.C. §1013; *St. Paul Fire & Marine Insurance Co.* v. *Barry*, 438 U.S. 531 (1978) (defining "boycott" as it has traditionally been understood under the Sherman Act).

that did not meet their prices, such evidence would not compel a finding that defendants had engaged in an illegal boycott. To be actionable, a refusal to deal must be *concerted. Compare Klor's, Inc* v. *Broadway-Hale Stores, Inc.,* 359 U.S. 207 (1959), and *United States* v. *General Motors Corp.,* 384 U.S. 127 (1966), *with Times-Picayune* v. *United States,* 345 U.S. 594, 625 (1953) ("[r]efusals to sell, without more, do not violate the Act"). There is no evidence that the defendants have agreed between themselves on the list of shops to be favored or disfavored. Nor is there any evidence that either of the defendants has conspired with other body shops to exclude plaintiff's body shop from competition. Instead, what evidence there is tends to establish that each of the defendants arrives at its list of preferred repair shops as the result of a wholly autonomous process. In short, the court concludes that there can be no dispute that the defendants did not refuse to deal with plaintiff, but merely refused to pay the price it charged; and that this refusal was not a concerted effort, either between the defendants themselves or between the defendants and other body shops. The court further concludes that these actions do not constitute an unlawful group boycott.

To summarize: The court assumes for the purposes of this motion, that each of the defendants has entered into agreements regarding the price of auto repair with various "preferred" body shops. The court has examined these agreements under the rule of reason, and under that test, finds, as a matter of law, that they do not, in and of themselves, violate the Sherman Act. Documents submitted by defendants and uncontradicted by plaintiff conclusively establish that there have been no agreements between the defendants regarding the establishment of prices for automobile repair. In the absence of such agreements, there can be no finding of price fixing. Finally, there is no basis, on the facts viewed in the light most favorable to the plaintiff, for a finding that

the defendants, or either of them, have engaged in an illegal boycott of the plaintiff's business.

Accordingly, defendants' motions for summary judgment are granted; and the motion of plaintiff is denied. Judgment is hereby entered in favor of defendants Allstate Insurance Company and State Farm Automobile Insurance Company, and the complaint is hereby dismissed.

ENTER:

/s/ Bernard M. Decker
United States District Judge

DATED: August 19, 1980.

APPENDIX B

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 80-2345

QUALITY AUTO BODY, INC.,

Plaintiff-Appellant,

v.

ALLSTATE INSURANCE COMPANY and
STATE FARM AUTOMOBILE INSURANCE COMPANY,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 79 C 3351—Bernard M. Decker, *Judge.*

ARGUED APRIL 7, 1981—DECIDED SEPTEMBER 24, 1981

Before WOOD, CUDAHY, *Circuit Judges,* and HOFFMAN, *Senior District Judge.**

CUDAHY, *Circuit Judge.* Plaintiff Quality Auto Body, Inc. ("Quality") appeals from a summary judgment for defendants, Allstate Insurance Company ("Allstate") and State Farm Mutual Automobile Insurance Company ("State Farm"), in an antitrust action involving automobile damage claim procedures. Quality's complaint, filed in August 1979, alleges that the defendant insurance

---

* The Honorable Walter E. Hoffman, Senior District Judge for the Eastern District of Virginia, is sitting by designation.

companies[1] are violating Section 1 of the Sherman Act (15 U.S.C. § 1) by processing damage claims in a manner which fixes the price Quality can charge for automobile repairs and by boycotting Quality if it fails to adhere to the defendants' price. In April 1980, both defendants filed motions for summary judgment supported by affidavits and sworn depositions. Shortly thereafter, Quality conceded that there were no material issues of fact and filed a cross motion for summary judgment on the relevant issues of law. On August 19, 1980, the district court granted defendants' motion, denied plaintiff's motion and dismissed the case. Quality filed a timely appeal, and we affirm.

I.

THE FACTS

This case focuses on the policies and practices of the defendant insurance companies in processing automobile damage claims. Each company has developed its own system for dealing with the claims of policyholders in what it deems an economical and efficient manner. Quality does not dispute either company's explanation of the basic facts of their respective damage claim procedures.

A. Allstate

Under the terms of an Allstate automobile insurance contract, the owner of a damaged vehicle must contact the insurer before any repairs are made. The company has the option to "pay for the loss in money or . . . repair the damaged property." In either case, Allstate's liability is limited to the reasonable cost of repair or replacement with a "product of like kind and quality."

---

[1] Two other defendants, Illinois Farmers Insurance Company and Aetna Casualty and Surety Company, were originally named in Quality's complaint. They were voluntarily dismissed from the lawsuit, however, on March 28, 1980 and June 13, 1980, respectively.

After an Allstate adjuster has examined the loss, he prepares an estimate based on his individual evaluation of the extent of the damage to the vehicle and the competitive cost of repairing that damage. The competitive rates used by Allstate are established by Allstate personnel on the basis of market information gathered from the reports of adjusters who frequent area repair shops and from the unsolicited statements of shop owners who inform the company of their rates from time to time.

Most of Allstate's claims are processed under the company's "shop of the customer's choice" policy. This policy permits the insured to choose the shop which will repair the damaged vehicle. After Allstate has prepared an estimate and determined the extent of its contractual obligation, the adjuster will attempt to reach an "agreed price" with the representative of the shop selected by the customer so that the insurance settlement will cover the entire cost of repairs (less any deductible). In the event that Allstate is unable to reach an "agreed price" with the shop, Allstate will pay the insured an amount which represents, in the company's opinion, the competitive cost of repair. If the insured still wants his selected shop to perform the repairs, the insured must pay the difference between the company's contractual obligation and the rate charged by the shop.

When the insured has no preference or asks Allstate for a recommendation, the company provides the insured with the name of a shop or shops which will in all likelihood be willing to repair the vehicle for the price shown on the Allstate estimate. The company claims, however, that the shop remains free to change its quoted rates at any time, to question the nature and scope of the repair indicated on the estimate, to negotiate a different price for repair of the vehicle and even to refuse to perform the work at all.

Allstate will also permit certain shops to begin repairing vehicle damage insured by Allstate without waiting for the company to inspect the loss. This "direct repair program" was introduced by Allstate in 1975 allegedly to improve the quality and speed of service which the company provides to policyholders and claimants. All-

state personnel determine the circumstances under which a shop is chosen for participation in this program. The company selects shops which, based on past experience, prepare competent estimates and perform quality repairs at competitive prices. If Allstate is dissatisfied with a shop's repair work or its estimates, the company will no longer utilize the shop in the direct repair program. Allstate emphasizes that this program is not a substitute for the company's "shop of the customer's choice" policy and is used only in cases where the customer expresses no shop preference.

B. State Farm

State Farm's procedures for handling damage claims are very similar to those used by Allstate. State Farm agents appraise damage to a vehicle by evaluating the parts which need to be replaced, the price of those parts and the number of hours needed to reasonably complete the repairs. The cost of repairs is calculated at the prevailing competitive price for the required parts and labor in the relevant geographic area. This price is determined through periodic surveys of local garages conducted by State Farm personnel. The information obtained during the survey is assembled into a garage directory, which lists the names and addresses of all participating facilities in a particular area and the parts discounts and hourly labor rates charged by each facility. State Farm's prevailing competitive price generally represents the rate charged by a substantial number of the shops surveyed.

At the time this suit was filed, State Farm had determined that the prevailing competitive prices for the area serviced by Quality were $14.00 per hour for labor and 15% off the list price for new parts on domestic automobiles. These prices had been computed following a telephone survey of 86 shops (including Quality) in the area. The survey revealed that 84 of the 86 shops charged an hourly rate of $14.00 or less. Quality, however, charged $16.00 per hour and increased the rate to $20.00 per hour several months later. The survey also indicated that over 70% of the shops offered some dis-

count off the manufacturer's suggested list price for new parts on domestic cars. Quality was one of only a handful of shops that refused to give any discount at all.

Like Allstate, State Farm permits the insured to select the garage of his choice, but the company will pay only what is "reasonable or necessary" to reimburse the owner in accordance with the terms of the applicable insurance policy. A garage is free, however, to challenge the nature and scope of the repairs listed on a State Farm estimate and may negotiate with State Farm for a modification in the amount of the damage appraisal. If an insured has no shop preference and requests a recommendation from State Farm, the company will provide the insured with a list of conveniently located shops which will be likely to perform the required repairs at a competitive price. But State Farm emphasizes that these shops may choose to change their labor rates, parts discounts or repair policies at any time.

C. Quality's Complaint

Quality charges that defendants have, by concerted action, established claim procedures which constitute *per se* violations of Section 1 of the Sherman Act. 15 U.S.C. § 1. Specifically, Quality maintains that defendants' repair estimates illegally fix the price which Quality may charge for labor and parts at the lowest prevailing competitive rate. If Quality seeks a higher rate, defendants inform the insured that they will pay only the prevailing competitive price and suggest that the insured remove the damaged vehicle to a shop which will perform the work at the defendants' price. Quality claims that this pricing policy artificially suppresses the rates charged for auto repair in violation of the antitrust laws.

In addition, Quality contends that the defendants maintain lists of body repair shops which agree to charge the rates established by the defendants and direct insureds to these preferred shops for automobile repairs. According to Quality, these vertical agreements not only reinforce defendants' price structure but also

effectively withhold business from shops which do not participate in defendants' pricing program. Quality claims that defendants' action amounts to a boycott of non-conforming shops and also violates Section 1 of the Sherman Act.

In ruling on both plaintiff's and defendants' motions for summary judgment, the district court grouped plaintiff's claims into three categories: (1) horizontal price-fixing (involving alleged agreements between Allstate and State Farm to pay damage claims at the lowest competitive rate and to compute damage estimates on that basis); (2) vertical price-fixing (involving alleged agreements between each insurance company and "preferred" repair shops to perform work at the rate established by the company's estimate); and (3) boycotts (involving alleged efforts on the part of the insurance company to deny business to plaintiff by refusing to reimburse plaintiff at a rate which exceeds the lowest prevailing competitive rate). The court concluded, as to alleged horizontal price-fixing, that "documents submitted by defendants and uncontradicted by plaintiff conclusively establish that there have been no agreements between the defendants regarding the establishment of prices for automobile repair." *Quality Auto Body v. Allstate Insurance Co.*, 1980-2 Trade Cases ¶63,507 at 76,696. As to the charges of vertical price fixing, the court assumed, for the purposes of the summary judgment motion, that each of the defendants had entered into provider agreements with certain preferred shops regarding the price of repair. But after analyzing these agreements under the rule of reason, the court determined, as a matter of law, that such provider agreements do not, in and of themselves, violate the Sherman Act. Finally, the court found no factual basis to support a holding that defendants engaged in an illegal boycott of plaintiff's business. As a result, the district court granted defendants' motion for summary judgment and dismissed the case.

II.
DISCUSSION

Since both parties agree that there is no genuine issue of material fact in this case, our inquiry on appeal is limited to determining whether defendants were entitled to judgment as a matter of law. *MGM Grand Hotel Inc. v. Imperial Glass Co.*, 533 F.2d 486 (9th Cir., *cert. denied*, 429 U.S. 887 (1976); *Lloyd v. Lawrence*, 472 F.2d 313 (5th Cir. 1973). For the purposes of review, we examine the record and the inferences which may be drawn from it in a light most favorable to the party against whom summary judgment was granted (here, the plaintiff) and thus apply the same standard employed by the district court. *Vette Co. v. Aetna Cas. & Sur. Co.*, 612 F.2d 1076 (8th Cir. 1980); *Radobenko v. Automated Equipment Corp.*, 520 F.2d 540 (9th Cir. 1975). We must affirm the district court's order if, based on the uncontroverted facts, we conclude that defendants must prevail as a matter of law.

A. Horizontal Price Fixing

Quality Auto's horizontal price-fixing claim arises under Section 1 of the Sherman Act, which proscribes any "contract, combination . . . or conspiracy in restraint of trade or commerce." 15 U.S.C. § 1. It is well settled that no liability can be predicated on Section 1 in the absence of some type of concerted action. *United States v. Colgate & Co.*, 250 U.S. 300 (1919). In order to establish the existence of concerted action in the instant case, plaintiff "had to submit evidence from which a jury could reasonably infer that [defendants] . . . had a conscious commitment to a common scheme designed to achieve an unlawful objective." *Edward J. Sweeney & Sons, Inc. v. Texaco, Inc.*, 637 F.2d 105, 111 (3d Cir. 1980), *cert. denied*, ... U.S. ..... (1981). *See also Klein v. American Luggage Works, Inc.*, 323 F.2d 787 (3d Cir. 1963); *United States v. Standard Oil Co.*, 316 F.2d 884 (7th Cir. 1963).

Quality has consistently admitted, that "there is no evidence [in the record] of horizontal agreements as

such between State Farm and Allstate." Appellant's Br. at 29. Quality maintains, however, that an agreement should be inferred from defendants' alleged adherence to a "common formula" for calculating damage estimates. We do not find this argument persuasive. The uncontroverted affidavits and deposition testimony submitted by defendants establish that each company has unilaterally developed its own claim-handling procedures.

As the district court noted, each defendant uses a different method for determining the lowest prevailing competitive rate for repair work.[2] Allstate relies on informal contacts between claim adjusters and body shops. State Farm prefers to conduct periodic garage surveys. *Quality Auto*, 1980-2 Trade Cases at 76,696. At times, these methods produce identical results and both companies write estimates using the same competitive rate. But plaintiff concedes that the rates used by the defendants frequently differ. For example, in 1976, Allstate computed estimates at a $10.00 per hour labor rate while State Farm calculated labor costs at $14.00 per hour. Similarly, in 1979, Allstate set its labor rate at $12.00 per hour, but State Farm used $14.00 per hour. Supp. App. at 92-93. The existence of these variances in the rates used by the two defendants minimizes the possibility of any concerted action to fix the price of auto repair.

The fact that both companies occasionally write estimates at the same rate does not require a contrary result. After all, both defendants are attempting to assess prevailing market conditions, and it would not be

[2] Quality complains about the general unreliability and the lack of internal consistency in defendants' methods for calculating the lowest prevailing competitive rate. These objections (*e.g.* that State Farm has conducted its "annual" survey on less than an annual basis and that Allstate's procedure amounts to nothing more than selective feedback from adjusters which is then subjectively evaluated by a District Manager) are not relevant to a Section 1 claim in the absence of any evidence of concerted action between the two companies.

surprising for each company on occasion to independently reach identical results. Even if we were to assume, however, that Allstate and State Farm somehow adhered to the same formula for calculating repair costs (nothing else being shown), there would be insufficient evidence here to establish the existence of concerted action or an antitrust conspiracy. Parallel behavior without more (a "plus factor")[3] is not enough to establish a Sherman Act violation. *Theatre Enterprises, Inc. v. Paramount Film Distributing Corp.*, 346 U.S. 537 (1954). In any event, the district court properly observed that even if the alleged horizontal agreement between the defendant insurers did exist, it would be immune from antitrust scrutiny under the McCarran-Ferguson Act, 15 U.S.C. § 1011 *et. seq.*, which exempts the "business of insurance" from the antitrust laws. *Quality Auto*, 1980-2 Trade Cases at 76,693-4.[4]

As a result, we believe the undisputed facts support a conclusion that the defendants unilaterally chose to estimate damage claims at the lowest prevailing competitive rate and instituted separate systems to calculate

---

[3] *See* discussion of horizontal price fixing in *Weit v. Continental Illinois National Bank & Trust Co.*, 641 F.2d 457, 462-66 (7th Cir. 1981).

[4] In *Group Life v. Royal Drug Co.*, 440 U.S. 205 (1979), the Supreme Court defined the "business of insurance" as (1) actions which relate to "the spreading and underwriting of a policyholder's risk," and (2) actions which relate "to the contract between the insurer and the insured." *Id.* at 211, 215. The Court also noted that a primary concern of Congress in passing this legislation "was that cooperative rate making efforts be exempt from the antitrust laws." *Id.* at 221. Thus, courts which have confronted the antitrust implications of horizontal agreements between insurance companies such as those alleged in the instant case have held that they constitute the "business of insurance" because they are "directly related to the relationship between the insurer and insured and [involve] claims procedures, which are an important determinant of commonly made rates and the spreading of risk." *See Proctor v. State Farm Mutual Automobile Insurance Co.*, 1980-2 Trade Cases, ¶63,591 at 77,139 (D.D.C. 1980). *See also Bartholomew v. Virginia Chiropractors Ass'n*, 612 F.2d 812 (4th Cir. 1979), *cert. denied*, 446 U.S. 938 (1980).

this rate. Independent action of this nature (even if it were somehow shown to harm competition) does not violate Section 1 of the Sherman Act. *Sweeney*, 637 F.2d at 110; *Overseas Motors, Inc. v. Import Motors, Ltd.*, 375 F. Supp. 499, 531 (E.D. Mich. 1974), *aff'd*, 519 F.2d 119 (6th Cir.), *cert. denied*, 423 U.S. 987 (1975). In the absence of any proof of concerted action, we conclude that summary judgment is appropriate on the horizontal price-fixing claim. *See, e.g., Lamb's Patio Theatre, Inc. v. Universal Film Exchange, Inc.*, 582 F.2d 1068 (7th Cir. 1978); *Scranton Construction Co. v. Litton Industries Leasing Corp.*, 494 F.2d 778 (5th Cir. 1974), *cert. denied*, 419 U.S. 1105 (1975).

B. Vertical Price Fixing

Quality also predicates its price-fixing claim on the alleged existence of vertical arrangements between the defendant insurance companies and certain "preferred" auto repair shops, which Quality characterizes as "provider agreements." Although the district court concluded that "for the most part, formal vertical arrangements do not exist," the court assumed, for the purposes of the summary judgment motion, that a trier of fact could infer an agreement between the defendants and some body shops to perform the work for a set price. *Quality Auto*, 1980-2 Trade Cases at 76,694. On appeal, we must therefore indulge plaintiff in the same assumption.

Unlike the horizontal agreements discussed in the previous section, a vertical arrangement between an insurance company and a preferred body shop would not be immune from the antitrust laws under the McCarran-Ferguson Act. *See* note 4 *supra*. In *Group Life & Health Insurance Co. v. Royal Drug Co.*, 440 U.S. 205 (1979), the Supreme Court examined a health insurance company's practice of entering into provider agreements with pharmacies to offer policyholders discount prices on prescription drugs. If the insured chose to make the purchase at a participating pharmacy, the insured paid only $2.00 for the drug and Blue Shield, the health insurer, reimbursed the pharmacy directly for the re-

mainder of the cost. If, on the other hand, the insured selected a non-participating pharmacy, the insured paid full price for the prescription and was subsequently reimbursed by Blue Shield for 75% of the difference between that price and $2.00. After engaging in an extensive analysis of the language and legislative history of the McCarran-Ferguson Act, the Court concluded that the agreements between Blue Shield and participating pharmacies were not part of the "business of insurance" protected by the McCarran-Ferguson Act and therefore were not exempt from scrutiny under the antitrust laws.

In order to reach this conclusion, the Court drew a distinction between the "business of insurance" which is protected by the Act and the "business of insurers" which is not protected at all. The "business of insurance" was limited to activities which spread or underwrite a policyholder's risk and directly involve the relationship between an insurer and the insured. Since the provider agreements between Blue Shield and the participating pharmacies were merely arrangements for the purchase of goods which enable the insurer to minimize cost and maximize profit, these agreements did not constitute the "business of insurance" but rather represented a "sound business practice" essentially unrelated to underwriting or the spreading of risk. *Id.* at 215. Thus, the Court concluded that these agreements, like "all agreements insurers may make to keep their costs under control—whether with automobile body repair shops or landlords" are not exempt from the provisions of the antitrust laws. *Id.* at 233-34.

Quality maintains that *Group Life* also compels a finding that the alleged provider agreements in the instant case constitute *per se* violations of the Sherman Act. Upon examination, however, we find this argument to be without merit. The Court in *Group Life* declined to express an opinion on the antitrust implications of the Pharmacy Agreements noting that a determination as to "[w]hether the Agreements are *illegal* under the antitrust laws is an entirely separate question, not now be-

fore us." *Id.* at 210 (emphasis in original).[5] Moreover, the government conceded in its amicus brief in the *Group Life* case that "the Pharmacy Agreements probably [did] not violate the antitrust laws." *Id.* at 210n.5. Hence, *Group Life* does not support Quality's vertical price-fixing claim here.

In any event, Quality insists that the alleged agreements between the defendants and preferred shops should be deemed *per se* illegal under the antitrust laws and that the district court erred by analyzing these agreements under the rule of reason. The Supreme Court explained the significance of *per se* and rule of reason analyses in *National Society of Professional Engineers v. United States*, 435 U.S. 679 (1978):

> There are, thus, two complementary categories of antitrust analysis. In the first category are agreements whose nature and necessary effect are so plainly anticompetitive that no elaborate study of the industry is needed to establish their illegality—they are 'illegal *per se*.' In the second category are agreements whose competitive effect can only be evaluated by analyzing the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed. In either event, the purpose of the analysis is to form a judgment about the competitive significance of the restraint . . . .

Id. at 692. Quality suggests that the purported provider agreements in the instant case are so blatantly anticompetitive that the court should invoke the *per se* rule and avoid "the necessity for [an] incredibly complicated and prolonged economic investigation into the entire history of the industry." Appellant's Br. at 19n.5.

Particularly in view of the Supreme Court's reluctance to recognize *per se* violations of the antitrust laws

---

[5] The Court did not consider the antitrust implications of the Pharmacy Agreements in *Group Life* because the district court held that the agreements were immune from antitrust analysis under the McCarran-Ferguson Act and never reached the merits of the underlying antitrust claims.

without considerable knowledge of the business practice in question and the impact of those practices on competition, a *per se* analysis is not appropriate in the instant case where anticompetitive effect is far from obvious and may be non-existent. *See Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 U.S. 1 (1979); *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36 (1977); *United States v. Topco Associates, Inc.*, 405 U.S. 596 (1972). Further, no court which has examined the antitrust implications of insurance provider agreements has used a *per se* approach. *Proctor v. State Farm Mutual Insurance Co.*, 406 F. Supp. 27 (D.D.C. 1975) *aff'd*, 561 F.2d 262 (D.C. Cir. 1977), *vacated and remanded*, 440 U.S. 942 (1979), *on remand*, 1980-2 Trade Cases ¶63,591 (D.D.C. 1980); *DeBonaventura v. Nationwide Mutual Insurance Co.*, 419 A.2d 942 (Del. Ch. 1980) *aff'd*, 428 A.2d 1151 (Del. 1981); *Chick's Auto Body v. State Farm Mutual Automobile Insurance Co.*, 168 N.J. Super. 68, 401 A.2d 722 (1979), *aff'd per curiam*, 176 N.J. Super. 320, 423 A.2d 311 (1981). *See also Travelers Insurance Co. v. Blue Cross of Western Pennsylvania*, 481 F.2d 80 (3d Cir.), *cert. denied*, 414 U.S. 1093 (1973). The vertical agreements, to the extent they exist here, are between buyers (the insurance companies) with apparently extensive market power and sellers (the body shops) with what, in comparison, seems slight market power. Since we find no reason on the face of things to regard dealings between such buyers and sellers as violations of the antitrust laws, we think the district court properly subjected these so-called vertical agreements to analysis under the rule of reason.

With the exception of Allstate's direct repair program which is premised upon an explicit agreement between the company and participating shops, we have assumed, as did the district court, that some type of informal agreement exists between the defendants and certain repair shops. Under the implicit terms of these alleged agreements, a shop which performs repair work at the company's prevailing competitive rate can expect to be placed on a "preferred" list and receive a steady stream of referrals from claim adjusters. A contract of this na-

ture between a buyer (the insurance company) and a seller (the body shop) generally does not, without more, appear to violate the antitrust laws at all. Only if such an agreement contains restrictions on one party's activities *other than those involved in the immediate purchase and sale* does the possibility of a Sherman Act violation arise. In refusing to pay a price higher than what they regard as the competitive rate, defendants have not imposed any restriction on the repair shops beyond the immediate sales transaction. Defendants are simply taking steps to insure the best terms available in the marketplace and firmly indicating their position on price to the sellers (the body shops). As the Third Circuit explained in *Travelers Insurance Co. v. Blue Cross of Western Pennsylvania*, 481 F.2d 80 (3d Cir.), *cert. denied*, 414 U.S. 1093 (1973), "this pressure encourages [suppliers] to keep their costs down; and, for its own competitive advantage, [enables the insurer to pass] . . . along the savings thus realized to consumers. To be sure, [the insurer's] initiative makes life harder for commercial competitors. . . . The antitrust laws, however, protect competition, not competitors; and stiff competition is encouraged, not condemned." *Id.* at 84. Thus, the mere existence of informal (or formal) provider agreements in the instant case, far from establishing a Sherman Act violation, seems merely to show aggressive and competitive dealing by the insurance companies.

Quality asserts, of course, that defendants, as large-scale purchasers of services wield substantial market power through the use of these agreements. As the nation's largest automobile insurer, State Farm collected more than $2 billion in direct premiums in 1979, and sustained slightly less than $1.2 billion in direct losses. Allstate, the second largest automobile insurer, received $1.3 billion in premiums and paid out approximately $800 million in losses. Together these two companies write more than one quarter of the nation's automobile insurance policies and pay out more than one quarter of the claims settlements in the industry. As a result, these defendants have an undeniable impact on the price structure of the auto repair market. But much as this impact may contribute to the discomfiture of the

body shops, it probably rebounds to the benefit of competition and consumers. In the absence of proof of some concerted action or an abuse of defendants' buying power, the provider agreements do not illegally restrain trade. Like the small town dairy selling to the A&P, the body shops may be at a huge disadvantage as traders. But the Sherman Act provides no remedy for imbalance of market power as such, absent certain types of abuse.[6]

Thus, assuming the existence of informal vertical agreements in the instant case, plaintiff is simply unable to establish an antitrust claim. Quality does not deny that the body shops on defendants' preferred list are not obligated to perform work at the price set in the company's estimate. As the district court noted, "the only consequence of a refusal to perform the work at that price is that the customer will have to pay the additional charge himself, and may, as a result, decide to take his business elsewhere." *Quality Auto*, 1980-2 Trade Cases at 76,697. And it is not the fault of the defendants that car owners "have decided that the quality of workmanship and materials available at plaintiff's shops is not sufficiently superior to that furnished at the competitive or preferred prices recommended by defendants to its insureds and claimants to warrant the paying of money out of one's own pocket to make up the difference between plaintiff's prices and those offered by those

[6] Quality suggests that the defendants abused their market power by artificially suppressing the rates charged for automobile repair. When the rate is too low, some repair shops resort to dishonest practices in order to survive. These practices include: (1) charging for new parts but using old parts; (2) estimating parts that are not damaged; (3) straightening old parts but charging for new parts; (4) inflating labor hours; (5) billing for repairs which have not been performed; and (6) offering rebates and bribes to adjusters. Although these deplorable practices may be prevalent in the auto repair industry, *in and of themselves* they are not matters the antitrust laws were intended to address. In any event, there is no evidence in the present case that defendants combined or conspired to fix or suppress the price of auto repair and no evidence that Quality or any other area shops were engaging in dishonest practices.

shops which quote more competitive prices." *DeBonaventura*, 419 A.2d at 950.

Other courts that have analyzed the antitrust implications of the damage claim procedures established by automobile insurance companies have similarly found that the insurer's refusal to pay more than the prevailing competitive rate is not illegal. In *Proctor v. State Farm Mutual Automobile Insurance Co.*, 406 F. Supp. 27 (D.D.C. 1975) *aff'd*, 561 F.2d 262 (D.C. Cir. 1977), *vacated and remanded*, 440 U.S. 942 (1979), *on remand*, 1980-2 Trade Cases ¶63,591 (D.D.C. 1980), the owners of four automobile repair shops filed suit against the defendant insurance companies complaining as Quality does here that the insurers entered into a horizontal agreement to calculate damage estimates at the lowest prevailing competitive rate and implemented the agreement through the use of vertical arrangements with preferred shops, which agreed to perform the work at defendants' price. When the merits of these claims were finally considered,[7] however, the court concluded that the "vertical arrangements . . . [did] not offend the antitrust laws." 1980-2 Trade Cases at 77,140. After noting that the questioned practices "stemmed solely from [the insurer's] desire to slow the rate of increase in the claims payments required to satisfy the companies' contractual obligations to their policyholders," the court noted,

---

[7] In *Proctor*, the district court originally granted the defendants' motions for summary judgment holding that the insurance companies' claims adjustment practices were immune from antitrust attack under the McCarran-Ferguson Act. 15 U.S.C. § 1011 *et seq.* *Proctor*, 406 F. Supp. 27 (D.D.C. 1975). On appeal, the D.C. Circuit affirmed the grant of summary judgment to the defendant insurers on antitrust immunity grounds. *Proctor*, 561 F.2d 262 (D.C. Cir. 1977). In March of 1979, however, the Supreme Court vacated the judgment and remanded the case to the court of appeals in light of *Royal Drug*. *Proctor*, 440 U.S. 942 (1979). The court of appeals subsequently remanded to the district court for a determination of the merits of the antitrust claim. The district court's decision on the merits is reported at 1980-2 Trade Cases ¶63,591 (D.D.C. 1980).

> it is well to remind ourselves that a principal purpose of the antitrust laws is to preserve and foster competition in the market place. *Appellants' basic thrust that insurance companies must write estimates of repair costs so as to be within the prices sought by high-priced non-competitive shops clearly runs counter to these antitrust principles.*

Id. at 77,141 (emphasis supplied).

Similarly, in *Chick's Auto Body v. State Farm Mutual Automobile Insurance Co.*, 168 N.J. Super. 68, 401 A.2d 722 (1979), *aff'd per curiam*, 176 N.J. Super. 320, 423 A.2d (1981), the auto body shops alleged, *inter alia*, that the insurers' refusal to pay more than the prevailing labor rate constituted price-fixing under the New Jersey Antitrust Act.[8] Although the court concluded that the challenged practices were immune from attack under an insurance exemption to the New Jersey antitrust laws, the court went on to consider and reject the merits of plaintiff's charges. Thus, the court stated, "the practice of the insurance companies to calculate the reimbursement for its insured based upon the lowest prevailing price in the market place (and to insure the integrity of that estimate by having an open list of competing shops which will generally accept it) is *the very essence of competition.*" *Id.* at 731-32 (emphasis supplied). *See also DeBonaventura v. Nationwide Mutual Insurance Co.*, 419 A.2d 942 (Del. Ch. 1980) *aff'd*, 428 A.2d 1151 (Del. 1981).

In the instant case, the district court concluded that "the provider agreements are nothing more than contracts between a buyer and a seller determining the price of services that the seller will perform, and are not illegal." *Quality Auto*, 1980-2 Trade Cases at 76,696. This decision is not only consistent with *Proctor* and *Chick's Auto*, but is also in accord with the longstanding

---

[8] The New Jersey Antitrust Act is construed to prohibit the same conduct forbidden by the federal antitrust laws. *Clairol, Inc. v. Cosmetics Plus*, 130 N.J. Super. 81, 325 A.2d 505 (1974).

antitrust principle that Section 1 of the Sherman Act does not preclude a party from unilaterally determining the parties with whom it will deal and the terms on which it will transact business. *United States v. Colgate & Co.*, 250 U.S. 300 (1919). This is true even where, as here, the buyers are big and the sellers are comparatively small. We believe plaintiff failed to establish any contract, conspiracy or combination by defendants to fix prices through vertical arrangements with preferred repair shops.[9] Therefore, summary judgment is also appropriate on this claim.

C. Boycotts

Finally, Quality contends that defendants' claims practices prevent plaintiff's shop from effectively competing with other repair shops which are willing to perform work at the prevailing competitive rate and therefore amount to a boycott of plaintiff's business. A boycott cognizable under the antitrust laws is a concerted refusal to deal. *See, e.g., Klor's, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207 (1959); *Lamb's Patio Theatre, Inc. v. Universal Film Exchanges, Inc.*, 582 F.2d 1068 (7th Cir. 1978). We can find nothing in the undisputed evidence to support a claim amounting to a concerted refusal to deal. The uncontroverted facts establish that neither Allstate nor State Farm has ever refused to deal with Quality. On the contrary, a large portion of Quality's business is generated by defendants' policyholders and claimants.[10]

The gravamen of Quality's complaint does not appear to be defendants' refusal to deal but rather defendants'

---

[9] Any problem here seems to involve the *structure* of the market, with giant buyers dealing with small, and relatively powerless sellers. Structure problems as such, if they do not involve concerted action, are generally not within the reach of Section 1 of the Sherman Act.

[10] Michael Orrico, president and sole owner of Quality Auto estimates that State Farm claimants and policyholders alone account for 30 to 40% of his business. Orrico Dep. at 293, Supp. App. at 147.

refusal to pay more than the prevailing competitive price for labor and new parts. Although some repair shops which charge more than the so-called prevailing competitive rate may suffer some economic losses, these losses appear basically to be the result of the shops' inability or unwillingness to meet competition. The Darwinian working of competition (which the antitrust laws are presumably designed to foster) mean that high-cost, high-price shops tend to lose business and might even go out of business if they cannot become more competitive. Presumably, this process is in the consumer's best interest (although it may have social costs we think inappropriate to address here). Whatever sympathy one may feel for the body shops in these circumstances, the antitrust laws were not intended to provide redress for losses resulting from noncompetitive prices. *Proctor*, 561 F.2d at 274-75; *Chick's Auto Body*, 401 A.2d at 730.

In any event, even if there were evidence that either or both defendants refused to deal with Quality, this conduct would not constitute an illegal boycott without proof of concerted action. We agree with the district court, however, that

> there is no evidence that the defendants have agreed between themselves on the list of shops to be favored or disfavored. Nor is there any evidence that either of the defendants has conspired with other body shops to exclude plaintiff's body shop from competition. Instead, what evidence there is tends to establish that each of the defendants arrives at its list of preferred repair shops as the result of a wholly autonomous process. In short, the court concludes that there can be no dispute that the defendants did not refuse to deal with plaintiff, but merely refused to pay the price it charged; and that this refusal was not a concerted effort, either between the defendants themselves or between the defendants and other body shops.

Quality Auto, 1980-2 Trade Cases at 76,697. Under these circumstances, the district court properly concluded that defendants' actions do not constitute an unlawful boycott and granted summary judgment on this claim.

20 No. 80-2345

For the foregoing reasons, the judgment of the district court is, in all respects, affirmed.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

USCA 4969—Midwest Law Printing Co., Inc., Chicago—9-24-81—350

APPENDIX C

Opinion by Judge Cudahy

JUDGMENT — ORAL ARGUMENT

United States Court of Appeals 11

For the Seventh Circuit

Chicago, Illinois 60604

September 24, 19 81.

Before

Hon. HARLINGTON WOOD, JR., Circuit Judge

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. WALTER E. HOFFMAN, Senior District Judge*

QUALITY AUTO BODY, INC.,
Plaintiff-Appellant,

No. 80-2345 vs.

ALLSTATE INSURANCE COMPANY and STATE FARM AUTOMOBILE INSURANCE COMPANY,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
79-C-3351
Judge Bern[illegible] M. Decker

This cause was heard on the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this date.

*The Honorable Walter E. Hoffman, Senior District Judge for the Eastern District of Virginia is sitting by designation.

Opposition

1

Office - Supreme Court, U.S.
FILED
FEB 3 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-1418

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

QUALITY AUTO BODY, INC.,
Petitioner,

v.

ALLSTATE INSURANCE COMPANY
and STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
Respondents.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Seventh Circuit

BRIEF OF ALLSTATE INSURANCE COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ALAN H. SILBERMAN
8000 Sears Tower
Chicago, Illinois 60606
(312) 876-8000
Counsel of Record for
Respondent Allstate
Insurance Company.

Of Counsel:
MICHAEL P. FONTANA
SONNENSCHEIN CARLIN NATH
& ROSENTHAL
8000 Sears Tower
Chicago, Illinois 60606

DATED: February 2, 1982

CHAS. P. YOUNG CHICAGO, INC.

QUESTION PRESENTED FOR REVIEW

Whether the Court of Appeals and the District Court correctly held, on the basis of the undisputed facts, that an insurance company does not violate the prohibitions of Section 1 of the Sherman Act (15 U.S.C. § 1) against a "contract, combination . . . or conspiracy in restraint of trade" by engaging in "price-fixing" when,

a. acting unilaterally, it settles claims for automobile body repair based upon its own evaluation of information as to competitive price levels available in the marketplace,

b. acting unilaterally, it advises car owners and auto body repair shops seeking higher prices that the competitive price is the limit of its liability, and that the car owner is free to deal with any shop at any price, but that any excess must be paid by the car owner, or,

c. acting unilaterally, it decides to ask auto body repair shops to separately quote the current prices at which they are willing to perform repair work and then recommend certain shops which have quoted competitive prices to car owners having no choice of shop of their own.

TABLE OF CONTENTS

	PAGE
Question Presented for Review	i
Table of Authorities	iii
Statement of the Case	2
A. The "Manner of Adjusting the Loss."	2
B. The Petitioner's Operations and Dealings with Allstate	6
Argument	7
I. The Decisions Below Properly Applied This Court's Holding In *Group Life & Health Insurance Co.* v. *Royal Drug Co.* By Subjecting Petitioner's Claims To Traditional Antitrust Analysis	7
II. The Decision Below Does Not Conflict With Any Decision By Any Other Circuit, And Is Consistent With Every Case Which Has Subjected Similar Conduct To Analysis Under The Antitrust Laws	9
III. The Decision Below Is In Accord With Antitrust Principles Articulated By This Court And Others	13
Conclusion	18

TABLE OF AUTHORITIES

PAGE

CASES

Broadcast Music, Inc. v. Columbia Broadcasting System, Inc. 441 U.S. 1 (1979) 13, 14

Chick's Auto Body v. State Farm Mutual Automobile Insurance Co., 168 N.J. Super. 68, 401 A.2d 722 (1979), *aff'd*, 176 N.J. Super. 320, 423 A.2d 311 (1981) 9, 10, 11, 12, 15

Davis v. Lewis, 487 S.W.2d 411 (Tex. Civ. App. 1972) 17

DeBonovantura v. Nationwide Mutual Insurance Co., 419 A.2d 942 (Del. Ch. 1980), *aff'd.* 428 A.2d 1151 (Del. 1981) 9, 10, 11, 12, 17

Daily Press, Inc. v. United Press International, 412 F.2d 126 (6th Cir.), *cert. denied,* 396 U.S. 990 (1969) 15

Dr. Miles Medical Co. v. John D. Park & Sons Co., 220 U.S. 373 (1911) 16

FTC v. Sun Oil Co., 371 U.S. 505 (1965) 13

Gambale v. Allstate Insurance Co., 209 Pa. Super. 330, 228 A.2d 58 (1967) 17

Group Life & Health Insurance Co. v. Royal Drug Co., 440 U.S. 205 (1979) 7, 8

Holmes v. Motors Insurance Corp., 277 So. 2d 472 (La. App. 1973) 17

Lamb's Patio Theatre, Inc. v. Universal Film Exchanges, Inc., 582 F.2d 1068 (7th Cir. 1978) 15

Medical Arts Pharmacy of Stamford, Inc. v. Blue Cross & Blue Shield of Connecticut, Inc., 518 F.Supp. 1100 (D. Conn. 1981) 8, 13

Nationwide Mutual Insurance Co. v. Automotive Service Councils of Delaware, Inc., 1981-1 Trade Cases [CCH] ¶ 63,958 (D. Del.) 12

Northern Pacific R. Co. v. United States, 356 U.S. 1 (1958) 17

PAGE

Proctor v. State Farm Mutual Automobile Insurance Co., 406 F.Supp. 27 (D.D.C. 1975) *aff'd*, 561 F.2d 262 (D.C. Cir. 1977), *vacated and remanded*, 440 U.S. 942 (1979), *on remand*, 1980-81 Trade Cases [CCH] ¶ 63,591 (D.D.C. 1980) 8, 9, 10, 12

Sausalito Pharmacy, Inc. v. Blue Shield of California, 1981-1 Trade Cases [CCH] ¶ 63,885 (N.D. Cal.) 8, 13

Sitkin Smelting & Refining Co. v. FMC Corp., 575 F.2d 440 (3d Cir. 1978) 14

Smith v. Farm Bureau, Etc., Insurance Co., 98 N.H. 420, 101 A.2d 778 (1953) 17

Top Service Body Shop, Inc. v. Allstate Insurance Co., 283 Or. 201, 582 P.2d 1365 (1978) 17

Travelers Insurance Co. v. Blue Cross of Western Pennsylvania, Inc., 481 F.2d 80 (3d. Cir.), *cert. denied*, 414 U.S. 1093 (1973) 9, 15

United States v. Citizens and Southern National Bank, 422 U.S. 86 (1975) 14, 15

United States v. Colgate & Co., 250 U.S. 300 (1919) 15

United States v. Masonite Corp., 316 U.S. 265 (1942) 16, 17

United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940) 17

United States Trotting Association v. Chicago Downs Association, Inc., 1981-2 Trade Cases [CCH] ¶64,393 (7th Cir.) 13

Workman v. State Farm Mutual Automobile Insurance Co., 520 F.Supp. 610 (N.D. Cal. 1981) 8, 12, 13

STATUTES

Sherman Act 15 U.S.C. § 1 ..... i, 2

McCarran-Ferguson Act, 15 U.S.C. § § 1011-15 ..... 7, 8

OTHER AUTHORITIES

Illinois Department of Insurance Regulation 9.19 ... 17

No. 81-1418

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

QUALITY AUTO BODY, INC.,
Petitioner,

v.

ALLSTATE INSURANCE COMPANY
and STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
Respondents.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Seventh Circuit

BRIEF OF ALLSTATE INSURANCE COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Allstate Insurance Company[1] files this brief in opposition to the petition of Quality Auto Body, Inc. for a writ of certiorari to review the judgment of the United States Court of Appeals in this case.

The decision below is not in conflict with any holding of this Court or with the decisions of any other circuit. Indeed, it is fully consistent with all decisions which have examined similar situations under the antitrust laws. Contrary to

[1] Allstate Insurance Company is a wholly-owned subsidiary of Sears Roebuck and Company. Allstate has no United States subsidiaries which are not wholly-owned except Caldwell Banker and Company, Dean Witter Reynolds Organization, Inc., and Executrans, Inc. Allstate is also affiliated, through Sears, with DeSoto, Inc., Kellwood Company, Roper Corp., Simpsons-Sears, Ltd., and Universal-Rundle Corp. Both Allstate and Sears invest in the stock of numerous additional companies which are not affiliates.

petitioner's assertion, no "important question of federal law which has not been settled" (Petition, p. 7) is presented here. The courts below did no more than apply fundamental and well-settled antitrust principles to the undisputed factual record, rejecting petitioner's misuse of antitrust labels such as "price-fixing", "boycott", and "per se" illegality.

STATEMENT OF THE CASE

As petitioner emphasizes, its complaint challenges respondent Allstate's "manner of adjusting the loss" (Petition, p. 2), asserting that there is something in respondent's internal claim adjusting procedures which comes within the prohibitions of § 1 of the Sherman Act (15 U.S.C. § 1) against a contract, combination or conspiracy unreasonably restraining trade.

A. The "Manner of Adjusting The Loss."

Allstate's insurance contract with its policyholder provides that, at its option, Allstate may "pay for the loss in money or may repair the damaged property". It expressly provides that the car owner is not simply to have the car repaired, but must first contact the insurer, and that in satisfying any liability, Allstate shall not be obligated to incur expense beyond the reasonable cost of repair or replacement with a "product of like kind and quality".

The undisputed factual record in the courts below reveals that within this framework, Allstate has evolved its own specialized techniques and procedures for dealing with claims in a manner which Allstate hopes will serve its own competitive purposes—giving maximum customer service at the lowest possible claim cost. Allstate takes the position in dealing with car owners that its contract liability is limited to the price which the most reasonably-priced competitive shops in the area would charge for properly completing all necessary repairs, and attempts to settle automobile material

damage claims on this basis. (C.A. Supp. App.[2] 46, 53-54, 57).

The foundation of Allstate's method of handling claims is its "shop of the customer's choice" policy. Under this policy, whenever a car owner indicates to an Allstate representative that he has selected a repair shop at which he wishes his automobile to be repaired, Allstate will respect that choice (C.A. Supp. App. 43). After Allstate determines the extent of its contract obligation to the car owner, as described below, and prepares the Allstate estimate, the adjuster will attempt to reach an "agreed price" with the representative of the body shop selected by the car owner (C.A. Supp. App. 50), so that the settlement covers the entire cost of repairs (less any deductible). Petitioner acknowledges that Allstate has done business with it on this basis (C.A. Supp. App. 98-99, 109-110, 156).

Allstate's shop of the customer's choice policy specifies that the car owner is free to make arrangements for the repair of his vehicle at any shop he chooses, even if the car owner wishes to have repairs effected by a shop whose charges exceed the competitive cost of repairs (and are thus in excess of Allstate's contract obligation to the car owner). In the event that Allstate is unable to reach an agreed price with the customer's chosen shop, Allstate will still pay the car owner the amount which it has determined to be the competitive cost of the repair (C.A. Supp. App. 44-45). The car owner can pay a higher price to a shop for repairs if he chooses to do so. Allstate's position involves only the amount which it will pay to settle the claim. (C.A. Supp. App. 51-52.) As Allstate advised one insured whose car was repaired by the petitioner:

> "[Y]ou are free to deal with any shop you select. That shop is free to charge you any price that you and they agree upon. We have advised you of the amount which we are willing to pay to you in view of our contract

[2]The Supplemental Appendix For Defendants Appellees Allstate Insurance Company and State Farm Mutual Automobile Insurance Company filed in the Court of Appeals for the Seventh Circuit is cited herein as "C.A. Supp. App."

> obligation. We've also provided you with notification that Downers Grove Auto Body will perform necessary repairs for the amount which we have tendered to you, plus your deductible and tire depreciation. We have a responsibility to all policyholders to make payment on the basis of competitive prices. If we make higher payments to you, all policyholders will bear the cost. I'm sure you can see how unfair this would be. I trust this information clearly indicates our position." (C.A. Supp. App. 156.)

The competitive rates and charges used in Allstate's estimates are unilaterally determined by Allstate personnel based on market information which is available to them (C.A. Supp. App. 44). Many repair shops quote their prices, rates, and charges to Allstate from time to time, without any solicitation. Also, Allstate adjusters are regularly in a large number of shops in the course of adjusting claims, and they report to their supervisors and managers what rates those shops are currently quoting. (C.A. Supp. App. 57; *see also* C.A. Supp. App. 30, 36.) Any change in the rates and charges used in the preparation of the Allstate estimate results solely from an internal business judgment by Allstate (C.A. Supp. App. 57-58).

Repair shops which quote prices and labor rates to Allstate have not agreed in advance to repair automobiles in the manner described in the Allstate estimate, nor have they promised that the rates previously quoted by them will not change. The shop is free to change its quoted rates and prices at any time, to negotiate a different price for the repair of any vehicle, to question the nature and scope of estimated repairs indicated on the Allstate estimate, and to refuse to perform any job in its sole discretion. The only understanding between Allstate and a shop is that if a quoted rate is in effect at the time a particular repair job is obtained, the repairs will be billed at that rate (i.e., that the shop will not quote work at one rate and bill at a higher rate). (C.A. Supp. App. 46-47; *see* C.A. Supp. App. 31-32, 37-38.) Nothing in the interaction between Allstate and a body shop impairs the

ability of either party to respond freely (and instantaneously) to competitive market forces.

In addition, certain body repair facilities are permitted by Allstate to begin repairing vehicle damage insured by Allstate after the car owner reports the claim to Allstate without waiting for Allstate to inspect the loss. This "direct repair program" was introduced by Allstate in 1975 to improve the quality and speed of service which it provides to policyholders and claimants (C.A. Supp. App. 54). Allstate personnel alone decide whether and in what circumstances to utilize a shop in the direct repair program. Allstate selects body shops which, based on Allstate's past experience, prepare competent estimates and perform quality repairs at competitive prices (C.A. Supp. App. 54-55). It is uncontested that Allstate obtains quotations of rates and charges from shops which it intends to use as direct repair facilities, and records those quotations on the internal Allstate document referred to by the petitioner as "Direct Repair Program Guideline and Agreement" (Petition, pp. 4-5). Allstate has no agreement with any shop, including any direct repair shop, which inhibits the shop from changing its prices at any time in the sole business discretion of the shop (C.A. Supp. App 55).[3]

---

[3]The thrust of the direct repair program is, simply, to expedite customer service. Thus, when adjuster work load is heavy and regular adjustment procedures would lead to delay, Allstate can recommend a shop and authorize it to commence repairs immediately, based on the shop's own estimate. If Allstate's satisfaction with the shop's repair work or its estimates declines, Allstate remains free to stop utilizing the shop in its direct repair program (C.A. Supp. App. 57). Jobs done in direct repair program shops without prior inspection of the loss by Allstate are subject to reinspection. Reinspections are frequent, and, where appropriate, the estimate prepared by the shop is renegotiated by Allstate. (C.A. Supp. App. 33, 39, 55-56.) Shops used as "direct repair shops" typically permit Allstate to provide items such as glass, tires and batteries itself from other suppliers who have quoted low prices to Allstate and who bill Allstate directly. A body shop may offer its

(footnote continued)

As both courts below correctly observed (Petition, App. A p. 3a, App. B p. 11a), the direct repair program does not override Allstate's shop of the customer's choice policy. The record is devoid of any instance in which a car owner who expressed a choice of shop has been directed to utilize a shop participating in the direct repair program instead of his or her chosen shop.

In all cases, the relationship between Allstate and any particular body shop does not extend beyond the fact that—at that particular moment and without any restriction on either party's future conduct—the body shop is one of several that has indicated that it is willing to perform services at a particular price and, knowing that Allstate attempts to secure the benefits of competition in the conduct of its business, anticipates that Allstate will make use of its services when appropriate.

B. The Petitioner's Operations And Dealings With Allstate.

At the time this litigation was instituted, petitioner prepared estimates for automobile body repair work in its shop on the basis of a $20 per hour labor rate. Other shops in petitioner's area performed auto body repair work at lower rates, generally $14 per hour or $16 per hour (C.A. Supp. App. 60, 85). Auto body repair shops purchase parts (such as fenders, bumpers, etc.) at a wholesale price. Petitioner purchased parts at prices ranging from 20% to 33⅓% less than manufacturer's list price (C.A. Supp. App. 96). While its competitors computed estimates by marking up the selling price of parts to something less than full list price (generally described as a "discount", although, in fact, it is

---

own competitive prices on these items or keep its overall quote competitive by providing that Allstate will purchase these items itself. In either case, the price quotation reflects the basis on which the shop is willing to do business at a particular point in time. It does not involve any agreement which prevents the shop from reacting to competition as it sees fit. (*See* C.A. Supp. App. 161-172.)

simply a lower selling price), petitioner used full list price as the basis for its charges (C.A. Supp. App. 95-97, 150). As a result, petitioner has disagreed with respondent Allstate's computation of the competitive price of repairs. Petitioner acknowledges that it is free to charge any difference between the Allstate claim settlement offer and "its" price to the car owner (C.A. Supp. App. 89; *see* C.A. Supp. App. 156), and that, in fact, it follows a practice of entering into an agreement with the car owner that it will accept Allstate's check and the car owner will not have to pay any more out of his own pocket. Petitioner thus ends up performing repair work, and does so at the competitive price.

ARGUMENT

I. The Decisions Below Properly Applied This Court's Holding In *Group Life & Health Insurance Co.* v. *Royal Drug Co.* By Subjecting Petitioner's Claims To Traditional Antitrust Analysis.

Petitioner erroneously asserts that the holdings of the Court of Appeals and the District Court are in conflict with *Group Life & Health Insurance Co.* v. *Royal Drug Co.*, 440 U.S. 205 (1979), and that *Royal Drug* somehow mandates a finding that respondent has violated the antitrust laws. *Royal Drug* involved only the question of whether a federal court should entertain certain antitrust complaints involving insurance companies, or whether the McCarran-Ferguson Act (15 U.S.C. §§ 1011-15), exempts all forms of insurance company conduct from inquiry under the antitrust laws. In *Royal Drug*, this Court noted that the merits of the antitrust claim was "an entirely separate question, not now before us" (440 U.S. at 210) and held only that alleged "provider agreements" in which certain pharmacies agreed to provide drugs at a set price for a stated period of time should be analyzed on their merits, rather than being treated as totally immune under the McCarran exemption. In this case, both the District Court and the Court of Appeals followed the mandate of *Royal Drug* precisely, scrutinizing Allstate's claim handling

practices under traditional antitrust principles, and concluding that the challenged conduct involved no violation as a matter of law.

The assertion that a substantive rule of *per se* illegality was established or even suggested by this Court's opinion in *Royal Drug*, or by statements appearing in the Court of Appeals decision in that case concerning what is or is not the "business of insurance",[4] has been repeatedly rejected. *See Proctor* v. *State Farm Mutual Automobile Insurance Co.*, 1980-81 Trade Cases [CCH] ¶ 63,591 (D.D.C. 1980); *Workman* v. *State Farm Mutual Automobile Insurance Co.*, 520 F.Supp. 610 (N.D. Cal. 1981); *Sausalito Pharmacy, Inc.* v. *Blue Shield of California*, 1981-1 Trade Cases [CCH] ¶ 63,885 (N.D. Cal.); *Medical Arts Pharmacy of Stamford, Inc.* v. *Blue Cross & Blue Shield of Connecticut, Inc.*, 518 F.Supp. 1100 (D. Conn. 1981).

In the case at hand, respondent Allstate did not rely on the McCarran Act in support of its motion for summary judgment, and no claim for exemption is being made here. Neither the District Court nor the Court of Appeals relied on the McCarran Act in holding for Allstate. Far from being in conflict with the decisions of the courts below, neither the McCarran Act nor cases construing it have anything to do with their determination that Allstate's unilateral activity in the marketplace involves no antitrust violation.

---

[4] Petitioner quotes at length from the decision of the Court of Appeals for the Fifth Circuit in *Royal Drug* (Petition, pp. 10-12). Indeed, the principal thrust of Quality's petition is that the decisions below conflict with the Fifth Circuit's comments. That court's analysis concerned solely the question of whether the challenged insurance company practice constituted "the business of insurance" for purposes of the McCarran exemption and has no bearing on the issues presented here. Like this Court, the Fifth Circuit did not reach the question whether the insurance company practices challenged in *Royal Drug* violated the antitrust laws.

II. The Decision Below Does Not Conflict With Any Decision By Any Other Circuit, And Is Consistent With Every Case Which Has Subjected Similar Conduct To Analysis Under The Antitrust Laws.

The Court of Appeals scrutinized the challenged insurance company conduct under the antitrust laws, concluded that petitioner's effort to characterize that conduct as falling within several categories of activity which have been held to constitute a *per se* violation was totally baseless, and—resolving all inferences in favor of petitioner and applying the rule of reason—concluded as a matter of law that no antitrust violation was present. Several other courts have applied antitrust principles to similar insurance claim handling practices, both those of Allstate itself and of other insurance companies. Each such decision is fully in accord with the decision of the Court of Appeals below. No court has reached a contrary result.

In concluding that Allstate's conduct does not violate the antitrust laws, the Court of Appeals correctly relied on *Proctor* v. *State Farm Mutual Automobile Insurance Co.*, 406 F.Supp. 27 (D.D.C. 1975), *aff'd*, 561 F.2d 262 (D.C. Cir. 1977), *vacated and remanded*, 440 U.S. 942 (1979), *on remand*, 1980-81 Trade Cases [CCH] ¶ 63,591 (D.D.C. 1980); *Chick's Auto Body* v. *State Farm Mutual Automobile Insurance Co.*, 168 N.J. Super. 68, 401 A.2d 722 (1979), *aff'd*, 176 N.J. Super. 320, 423 A.2d 311 (1981); *DeBonoventura* v. *Nationwide Mutual Insurance Co.*, 419 A.2d 942 (Del. Ch. 1980), *aff'd* 428 A.2d 1151 (Del. 1981); and *Travelers Insurance Co.* v. *Blue Cross of Western Pennsylvania, Inc.*, 481 F.2d 80 (3d Cir.), *cert. denied*, 414 U.S. 1093 (1973) (holding as a matter of law that the interaction of an insurance company which sought to settle health insurance claims on the basis of competitive prices with certain health care providers involved no antitrust violation). The plaintiffs in both *Proctor* and *Chick's* made claims identical to petitioner's here; namely, that the manner in which Allstate and State Farm (as well as some other insurance companies) adjust automobile property damage claims constitutes price-fixing and a boycott. In both

cases the interaction of each insurance company with body shops was scrutinized and analyzed under the antitrust laws. Both courts rejected the price-fixing and boycott claims as a matter of law, granting summary judgment for the insurance companies. Indeed, the *Chick's* court noted the strongly pro-competitive effect of the challenged insurance company practices, concluding that:

> "The practice of the insurance companies to calculate the reimbursement for its insured based upon the lowest prevailing price in the marketplace (and to insure the integrity of that estimate by having an open list of competing shops which will generally accept it) is *the very essence of competition*" (401 A.2d at 731-32; emphasis added).

Similarly, in *Proctor*, *supra*, the court noted that the questioned practices "stemmed solely from [the insurers'] desire to slow the rate of increase in the claims payments required to satisfy the companies' contractual obligations to their policyholders", 1980-81 Trade Cases at p. 77,141, and further commented that:

> "It is well to remind ourselves that a principal purpose of the anti-trust laws is to preserve and foster competition in the market place. Appellants' basic thrust that insurance companies must write estimates of repair costs so as to be within the prices sought by high-priced non-competitive shops clearly runs counter to these anti-trust principles." (*Id.*).

In *DeBonoventura*, *supra*, a case in which similar claim handling practices were challenged as tortiously interfering with the business relations of plaintiff body shops under Delaware common law, the court pointed out that plaintiffs' grievance was with the manner in which a competitive marketplace operates:

> "As observed by the late Justice Holmes, while an appellate judge in Massachusetts: 'One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services, and that of society . . . to get his services for the

> least possible return' *Vegelahn* v. *Gutner*, 167 Mass. 92, 44 N.E. 1077 (1896). . . ."
>
> * * *
>
> "[T]he crux of plaintiffs' grievance is to be found not in any contrived theory of improper economic coercion . . . but in the economic reality that most car owners . . . have decided that the quality of the workmanship and materials available at plaintiffs' shops is not sufficiently superior to that furnished at the competitive or preferred shops recommended by defendant to its insureds and claimants to warrant the paying of money out of one's own pocket to make up the difference between plaintiffs' prices and those offered by those shops which quote more competitive prices . . ." (419 A.2d at 949, 950).

The Court of Appeals below concurred with the conclusion of the District Court, following *Proctor* and *Chick's*, that even if some informal vertical arrangements could be assumed to be present for purposes of reviewing a motion for summary judgment,[5] "the provider agreements are nothing

---

[5] Petitioner baldly misstates the opinion of the District Court when it purports to "quote" that court as saying:

> "The Court would be blind to economic reality if it did not recognize that the policies of the Defendants well known to every body shop create powerful incentives to adhere to the company guidelines. Vertical arrangements between the insurer and body shop exist. (App. A, p. 3a[*sic*])" (Petition, p. 8.)

Petitioner has, without saying so, elipsed twenty lines of the opinion between the first and second sentences of its "quote", including two thirds of the key sentence. Far from concluding that vertical arrangements actually exist in this case, the District Court merely said that:

> "viewing the facts in the light most favorable to the plaintiff, the court will, for the purposes of this motion, *assume* that informal vertical arrangements, between the defendants and certain 'preferred' body shops, exist." (Petition, App. A p. 6a; emphasis added).

more than contracts between a buyer and a seller determining the price of services that the seller will perform, and are not illegal" (Petition, App. A p. 7a-3, App. B p. 24a). In other words, the Court of Appeals determined that any vertical arrangement which *might* be inferred from the uncontested facts of this case is simply not a "price-fixing" agreement, as petitioner contended.

The Court of Appeals concluded that, like the plaintiffs in *Proctor*, *Chick's* and *DeBonoventura*, petitioner's complaint was with the way the normal competitive process works:

> "The gravamen of Quality's complaint . . . [appears to be] defendants' refusal to pay more than the prevailing competitive price for labor and new parts. Although some repair shops which charge more than the so-called prevailing competitive rate may suffer some economic losses, these losses appear basically to be the result of the shops' inability or unwillingness to meet competition. The Darwinian working of competition (which the antitrust laws are presumably designed to foster) mean that high-cost, high-price shops tend to lose business and might even go out of business if they cannot become more competitive. Presumably, this process is in the customer's best interest (although it may have social costs we think inappropriate to address here). Whatever sympathy one may feel for the body shops in these circumstances, the antitrust laws were not intended to provide redress for losses resulting from noncompetitive prices." (Petition, App. B pp. 25a-26a.)

Other courts have reached similar conclusions. Inexplicably, petitioner ignores these cases and the fact that the decision below has been cited with approval by many of these courts (and never questioned). *See Nationwide Mutual Insurance Co.* v. *Automotive Service Councils of Delaware, Inc.*, 1981-1 Trade Cases [CCH] ¶ 63,958 (D. Del.) (summary judgment granted in favor of automobile insurer on price-fixing and boycott claims by body shops, relying on the District Court decision in *Quality* for both points); *Workman* v. *State Farm Mutual Automobile Insurance Co.*, 520

F.Supp. 610 (N.D. Cal. 1981) (summary judgment granted in favor of automobile insurer on price-fixing and boycott claims by body shops); *Sausalito Pharmacy, Inc.* v. *Blue Shield of California*, 1981-1 Trade Cases [CCH] ¶ 63,885 (N.D. Cal.) (summary judgment granted in favor of health insurers whose attempts to settle claims for reimbursement for drugs on the basis of competitive prices were challenged as price-fixing, the court specifically "following the test set forth in *Quality Auto Body" (Id.* at p. 75, 608) in analyzing alleged vertical arrangements between the insurer and certain pharmacies); *Medical Arts Pharmacy of Stamford, Inc.* v. *Blue Cross & Blue Shield of Connecticut, Inc.*, 518 F.Supp. 1100 (D. Conn. 1981) (summary judgment granted in favor of a health insurance company whose claim handling practices were held not to involve price-fixing). *See also United States Trotting Association* v. *Chicago Downs Association, Inc.*, 1981-2 Trade Cases [CCH] ¶ 64,393 (7th Cir.) (in which the Court of Appeals decision below was cited with approval as requiring application of the rule of reason to a claim that the interaction between certain race tracks and the owners and trainers of horses engaged in harness racing—members of the plaintiff association—involved price-fixing by the tracks).

Petitioner cites no contrary authority.

III. The Decision Below Is In Accord With Antitrust Principles Articulated By This Court and Others.

Petitioner's claim is based on a patent misuse of antitrust jargon, such as "price-fixing" and "boycott". As the courts below recognized, petitioner's attempt to characterize Allstate's competitive conduct as falling within those categories of *per se* violation fails to comport with the well-established antitrust principles which give those terms their substantive content. As this Court has emphasized, "easy labels do not always supply ready answers", *Broadcast Music, Inc.* v. *Columbia Broadcasting System, Inc.*, 441 U.S. 1, 8 (1979). In the adjudication of antitrust claims, "[i]nvocation of mechanical word formulas cannot be made to substitute for adequate probative analysis." *FTC* v. *Sun Oil Co.*, 371 U.S. 505, 527 (1965). Both courts below subjected the

undisputed factual record to careful legal analysis, exposing petitioner's use of antitrust key-words and labels and concluding that they simply do not fit the case.

Both "vertical" and "horizontal" price-fixing involve agreements between buyers and sellers to interdict the operation of market forces by substituting private agreements for the market-determined price. In the vertical context, a manufacturer or supplier sets the resale price of his product by agreement with others in the chain of distribution instead of having prices determined by each distributor's own evaluation of the market. In the horizontal context, price-fixing refers to an arrangement between competitors in which they commit to adhere to a jointly-determined price rather than individually responding to market stimuli. The essence of such price-fixing is that it is a "treaty with competitors." *United States* v. *Citizens and Southern National Bank*, 422 U.S. 86, 116 (1975) *Cf. Broadcast Music, Inc.* v. *Columbia Broadcasting System, Inc.*, 441 U.S. 1, 8 (1979). Neither situation applies here. "Price-fixing" involves agreements which extend beyond a particular sales transaction; when a buyer and a seller agree on a sale price—as they must in every transaction—that is not price-fixing. *See Sitkin Smelting & Refining Co.* v. *FMC Corp.*, 575 F.2d 440, 446 (3d Cir. 1978).

As both courts below recognized, petitioner offered no evidence of any such agreements between competitors or of any form of conspiracy in restraint of trade. An insurance company's internal decision to rely on competitive prices which have been quoted to it as a basis for settling claims, or to make certain recommendations to car owners, involves no form of agreement which interdicts the free play of market forces; no agreement restricting a seller's right to offer prices as the seller independently sees fit; no agreement restricting the insurer's right to select the shops its wishes to recommend; no agreement restricting the insurer's right to make recommendations when, as and if it sees fit; and no other mutual obligation of any kind between the shop and the insurer, except that if a repair job is performed it will be billed at the quoted prices stated by the shop to be in effect when the job was begun. Shops quote low prices (subject to

change at will), relying on their ability to compete. The insurer retains its freedom to make decisions as its interest may from time to time appear. The "agreement" to do business with a seller which follows after a seller quotes a price which the buyer considers "competitive" under prevailing market conditions is manifestly not an agreement which interferes with the operation of market stimuli; it is what results from competition. *See United States* v. *Citizens and Southern National Bank*, 422 U.S. 86 (1975); *Travelers Insurance Co.* v. *Blue Cross of Western Pennsylvania, Inc.*, 481 F.2d 80, 84 (3d Cir.), *cert. denied* 414 U.S. 1093 (1973); *Chick's Auto Body* v. *State Farm Mutual Automobile Insurance Co.*, 168 N.J. Super. 68, 401 A.2d 722, 731-32 (1979), *aff'd*, 176 N.J. Super. 320, 423 A.2d 311 (1981).[6]

The decision of the Court of Appeals does not conflict in any way with *United States* v. *Masonite Corp.*, 316 U.S. 265

---

[6] Petitioner's other claim below, that Allstate's unilateral conduct constitutes a "boycott" of petitioner, was also properly rejected as a matter of law. As both courts below recognized, the uncontested facts show that there has been no refusal to do business here—not even a unilateral one. The "refusal" is simply that Allstate has independently decided not to recommend petitioner, a shop charging $20 per hour, to car owners who have no shop choice of their own and that, under appropriate circumstances, in conformity with applicable precedents and state regulations (see p. 17, n.7, *infra*), it recommends lower-priced shops. When car owners being reimbursed by Allstate wish to patronize petitioner, petitioner must choose between reducing its price to competitive levels or asking the car owner to pay an additional amount out of its own pocket (and running the risk that the car owner will choose not to do so). Allstate's own determination as to the number and identity of shops to recommend, and when to make recommendations, is one which under all precedents cannot form the basis of any "boycott" claim. *See United States* v. *Colgate & Co.*, 250 U.S. 300 (1919); *Lamb's Patio Theatre, Inc.* v. *Universal Film Exchanges, Inc.*, 582 F.2d 1068 (7th Cir. 1978); *Daily Press, Inc.* v. *United Press International*, 412 F.2d 126 (6th Cir.), *cert. denied*, 396 U.S. 990 (1969); *Chick's Auto Body* v. *State Farm Mutual Automobile Insurance Company*, 168 N.J. Super 68, 84-85, 401 A.2d 722, 730 (1979), *aff'd*, 176 N.J. Super 320, 423 A.2d 311 (1981).

(1942); *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940); or *Dr. Miles Medical Co.* v. *John D. Park & Sons Co.*, 220 U.S. 373 (1911), cited by petitioner (Petition, pp. 8-9). Each of those cases presented substantive questions which differ markedly from those involved in the case at bar, and each involved antitrust principles which the courts below correctly held inapplicable here. *Masonite* involved agreements between a manufacturer of hardboard and certain other competing manufacturers of hardboard which restricted the price at which those other manufacturers could sell their own product to their own customers. The instant case involves no such "horizontal" agreements among competitors. In *Dr. Miles Medical Co.*, this Court dealt with a vertical resale price maintenance agreement. Similarly, *Socony-Vacuum* involved both a horizontal agreement among competing oil companies concerning the price at which certain products would be sold and agreements between those oil companies and their jobbers concerning the resale prices of those same products, hardly analogous to the issue here. The case at bar involves simply the market process by which the seller of a service (petitioner or some other body shop) arrives at a sale price with the insurer paying for that service. Moreover, however the relationship between insurer and shop is characterized, it involves no form of advance agreement as to a price to be charged. A decision as to price is ultimately reached by the seller in each instance. As the Court of Appeals noted, petitioner:

> "does not deny that the body shops on [respondents'] preferred list are not obligated to perform work at the price set in the company's estimate. As the district court noted, 'the only consequence of a refusal to perform the work at that price is that the customer will have to pay the additional charge himself, and may, as a result, decide to take his business elsewhere'." (Petition, App. B p. 22a.)

Far from complaining of any restraint of trade, petitioner

actually seeks to use the antitrust laws to change the insurance contract between respondent Allstate and its policyholders.[7] The cases which have examined the claims practices challenged here have unanimously concluded that by adopting these procedures, the insurer is doing no more than pursuing its own legitimate economic interests and contract rights through participation in the competitive marketplace (See pp. 9-13, *supra*). Petitioner seeks to exclude the insurance companies from the free play of market forces and eliminate their competitive influence. The antitrust laws rest on the premise that there will be "unrestrained interaction" of all competitive forces. *Northern Pacific R. Co.* v. *United States*, 356 U.S. 1, 4 (1958). Petitioner, however, ignores the competitive process and equates "restraint" with the fact that it has not obtained more business at high prices. The "competition" to which plaintiff claims to be entitled is one in which it would be insulated from any competitive influence which it does not want to meet or which would affect it adversely. Such a charade is not

---

[7] Both respondent Allstate's contract with its policyholder and applicable precedents and regulations (*See* Regulation 9.19 of the Illinois Department of Insurance, reproduced as Supplemental Appendix A, attached hereto), limit respondent Allstate's contract liability to the reasonable cost of repair or replacement with a product of like kind and quality. This limitation has been repeatedly interpreted as a rejection of the notion that the insurance company should simply "pay the bill" in any amount which the repair shop decides is appropriate. Rather, the insurance company is entitled to make its own determination of the dollar amount of the loss by determining what the most competitively-priced shops in the area will charge for properly and completely repairing the damage, and limit the amount of its settlement accordingly. *Smith* v. *Farm Bureau, Etc., Insurance Co.*, 98 N.H. 420, 101 A.2d 778 (1953); *Gambale* v. *Allstate Insurance Co.*, 209 Pa. Super. 330, 228 A.2d 58 (1967); *Holmes* v. *Motors Insurance Corp.*, 277 So. 2d 472, 473-74 (La. App. 1973); *DeBonoventura* v. *Nationwide Mutual Insurance Co.*, 419 A.2d 942 (Del. Ch. 1980), *aff'd* 428 A.2d 1151 (Del. 1981). *See also, Davis* v. *Lewis*, 487 S.W. 2d 411 (Tex. Civ. App. 1972); *Top Service Body Shop, Inc.* v. *Allstate Insurance Co.*, 283 Or. 201, 582 P.2d 1365 (1978).

competition in any sense of the word.

CONCLUSION

As petitioner concedes (Petition, p. 14), "if this Court believes that the practices of the carriers under each provider agreements [*sic*] must be examined to determine whether individual practices, on balance, have a negative impact on competition certiorari ought to be denied." Analysis of the circumstances of each individual case and application of legal principles is precisely what the rule of reason requires and is precisely the basis of the decision below. For this reason, as well as for the reasons set forth above, certiorari should be denied.

Respectfully submitted,

ALAN H. SILBERMAN
8000 Sears Tower
Chicago, Illinois 60606
(312) 876-8000
Counsel of Record for Respondent Allstate Insurance Company.

Of Counsel:
MICHAEL P. FONTANA
SONNENSCHEIN CARLIN NATH & ROSENTHAL
8000 Sears Tower
Chicago, Illinois 60606

DATED: February 2, 1982

SUPPLEMENTAL APPENDIX A

Illinois Department of Insurance Regulation 9.19, ¶ 14

Prior to August 3, 1979 Illinois Department of Insurance Regulation 9.19, ¶ 14 provided in relevant part:

> 14. If partial losses are settled on the basis of a written estimate prepared by or for the company, the company shall supply upon request of the insured, a copy of the estimate upon which the settlement is based. The estimate prepared by or for the company shall be reasonable, in accordance with applicable policy provisions, and of an amount which will allow for repairs to be made in a workmanlike manner. If the insured subsequently claims, based upon a written estimate he obtains, that necessary repairs will exceed the written estimate prepared by or for the company, the company shall review and respond promptly in writing to the insured in regard to his written estimate and provide the insured with the name of a repair shop or contractor that will make the repairs in a workmanlike manner. . .

Illinois Department of Insurance Regulation 9.19, ¶ 7C

Since August 3, 1979, Illinois Department of Insurance Regulation 9.19, ¶ 7C provides in relevant part:

> 7C. If partial losses are settled on the basis of an estimate prepared by the company, or on the basis of any estimate prepared at the company's direction, regardless of the actual source of that estimate, the company must supply the insured or claimant with a copy of the estimate upon which the settlement is based. The company must supply the insured or claimant with the name of a repair shop that will effect repairs within the amount of settlement.

If the company is not able to provide the name of such a repair shop, and reasonable additional costs for repair or replacement are incurred, the amount of these costs in excess of the company's appraisal price shall be at the expense of the company.

Opposition

2

Office - Supreme Court, U.S.
FILED
FEB 25 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-1418

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

QUALITY AUTO BODY, INC.,

Petitioner,

v.

ALLSTATE INSURANCE COMPANY and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF OF STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WILLIAM A. MONTGOMERY
7200 Sears Tower
Chicago, Illinois 60606
(312) 876-1000
Counsel for Respondent State Farm Mutual Automobile Insurance Company

Of Counsel:
MARCI A. EISENSTEIN
SCHIFF HARDIN & WAITE
7200 Sears Tower
Chicago, Illinois 60606

Dated: February 23, 1982

Pandick Press Midwest, Inc., Chicago • 454-7600

COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW

Whether the court of appeals was correct in determining that alleged agreements between State Farm Mutual Automobile Insurance Company and individual automobile repair shops as to the labor rates and parts discounts the shop would charge for repairs insured by State Farm are not to be treated as illegal *per se* under Section 1 of the Sherman Act, 15 U.S.C. § 1.

TABLE OF CONTENTS

	PAGE
COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW	i
TABLE OF AUTHORITIES	iii
STATUTES AND REGULATIONS INVOLVED	2
COUNTERSTATEMENT OF THE CASE	2
A. Estimating Repair Costs	3
B. Garage Surveys	4
C. No Preferred Shops	5
REASONS FOR DENYING THE WRIT	5
I. The Court of Appeals and the District Court Properly Analyzed the Alleged Vertical Agreements Under the Rule of Reason	5
II. The Decisions Below Do Not Conflict With Any Other Known Decision	9
A. The Decisions Below Do Not Conflict With This Court's Ruling in *Group Life & Health Insurance Co.* v. *Royal Drug*	9
B. The Decisions Below Are Consistent With Every Known Decision Which Has Subjected Similar Conduct to Antitrust Scrutiny	10
CONCLUSION	14
APPENDIX OF RELEVANT STATUTES AND REGULATIONS	1a
Sherman Act, 15 U.S.C. § 1	1a
McCarran-Ferguson Act, 15 U.S.C. §§ 1011-15	1a
Illinois Department of Insurance Regulation 9.19	1b

TABLE OF AUTHORITIES

Cases

	PAGE
Broadcast Music, Inc. v. *Columbia Broadcasting System, Inc.*, 441 U. S. 1 (1979)	6
Chicago Board of Trade v. *United States*, 246 U. S. 231 (1918)	7
Chick's Auto Body v. *State Farm Mutual Automobile Insurance Company*, 168 N. J. Super. 68, 401 A. 2d 722 (1979), *aff'd per curiam*, 176 N. J. Super. 320, 423 A. 2d 311 (1981)	12
Continental T.V., Inc. v. *GTE Sylvania, Inc.*, 433 U. S. 36 (1977)	6
DeBonaventura v. *Nationwide Mutual Insurance Company*, 419 A. 2d 942 (Del. Ch. 1980), *aff'd*, 428 A. 2d 1151 (Del. Super. 1981)	12
Dr. Miles Medical Company v. *John D. Park & Sons Company*, 220 U. S. 373 (1911)	7, 8
Group Life & Health Insurance Company v. *Royal Drug*, 440 U. S. 205, *reh. den.* 441 U. S. 917 (1979)	9, 10
Group Life & Health Insurance Company v. *Royal Drug*, 556 F. 2d 1375 (5th Cir. 1977)	10
Medical Arts Pharmacy of Stamford, Inc. v. *Blue Cross and Blue Shield of Connecticut*, 518 F. Supp. 1100 (D. Conn. 1981)	7, 12
Nationwide Mutual Insurance Company v. *Automotive Service Councils*, 1981-1 Trade Cases [CCH] ¶ 63,958 (D. Del.)	7, 12
Northern Pacific Railway Company v. *United States*, 356 U. S. 1 (1958)	7
Proctor v. *State Farm Mutual Automobile Insurance Company*, 406 F. Supp. 27 (D. D. C. 1975), *aff'd*, 561 F. 2d 262 (D. C. Cir. 1977), *vacated and remanded*, 440 U. S. 942 (1979), *on remand*, 1980-81 Trade Cases [CCH] ¶ 63,591 (D. D. C. 1980)	7, 11, 12

PAGE

Sausalito Pharmacy, Inc. v. *Blue Shield of California, Inc.*, 1981-1 Trade Cases [CCH] ¶ 63,885 (N. D. Cal.) 7, 12

Travelers Insurance Company v. *Blue Cross of Western Pennsylvania*, 481 F. 2d 80 (3rd Cir.), *cert. den.* 414 U. S. 1093 (1973) 7, 12

United States v. *Arnold Schwinn & Company*, 388 U. S. 365 (1967), *overruled* 433 U. S. 36 (1977) 6

United States v. *Colgate & Company*, 250 U. S. 300 (1919) 8

United States v. *Masonite Corporation*, 316 U. S. 265, *reh. den.* 316 U. S. 713 (1942) 7, 8

United States v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, *reh. den.* 310 U. S. 658 (1940) 7, 8

United States v. *Topco Associates, Inc.*, 405 U. S. 596 (1972) 6

Workman v. *State Farm Mutual Automobile Insurance Company*, 520 F. Supp. 610 (N. D. Cal. 1981) 12

Statutes

Sherman Act, § 15 U. S. C. §1 ..... 2, 6, 7, 8

McCarran-Ferguson Act, 15 U. S. C. §§ 1011-15 .... 2, 9

Other Authorities

Illinois Department of Insurance Regulation 9.19... 2, 5

No. 81-1418

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

QUALITY AUTO BODY, INC.,

Petitioner,

v.

ALLSTATE INSURANCE COMPANY and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF OF STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent State Farm Mutual Automobile Insurance Company ("State Farm")[1] submits this brief in opposition to the petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit filed by Quality Auto Body, Inc. ("Quality Auto").

The petition for a writ of certiorari should be denied because, contrary to petitioner's assertion, the decision below presents no "important question of federal law which has not

[1] State Farm Mutual Automobile Insurance Company has no parent company, nor does it have any subsidiaries or affiliates which are not wholly owned by it or one of its subsidiaries.

been settled." (Pet. at p. 7).[2] On the contrary, the unanimous decision below, affirming the district court's ruling in all respects, is consistent with the decisions of this Court and every federal and state court which has addressed similar issues. This Court has held that the validity of vertical agreements, such as the alleged agreements between State Farm and individual repair shops at issue here, must be scrutinized under the rule of reason. Moreover, every reported federal and state court decision which has evaluated the type of conduct challenged here has held that such conduct presents no triable antitrust issues.

STATUTES AND REGULATIONS INVOLVED

The statutes involved in this case are the Sherman Act, 15 U. S. C. § 1, and the McCarran-Ferguson Act, 15 U. S. C. §§ 1011-1015. The regulation involved is Illinois Department of Insurance Regulation 9.19. The pertinent text of each of these statutes and regulations is set forth in the Appendix *infra* at pp. 1a-1b.

COUNTERSTATEMENT OF THE CASE

In this action for injunctive relief, Quality Auto, an automobile repair shop located in Westmont, Illinois, contends that the claims handling practices of both State Farm and Allstate Insurance Company ("Allstate") violate Section 1 of the Sherman Act, 15 U. S. C. § 1. On August 19, 1980, District Judge Bernard M. Decker granted the motions of State Farm and Allstate for summary judgment. Declining to apply a rule of *per se* illegality, Judge Decker analyzed the companies' respective claims handling practices under the rule of reason, determined that they presented no triable issues, and also denied Quality Auto's motion for summary judgment. (Pet., App. A). On September 24, 1981, the court of appeals

[2] "Pet." refers to the Petition for a Writ of Certiorari filed by Quality Auto. "Supp. App." refers to the Supplemental Appendix For Defendants-Appellees Allstate Insurance Company and State Farm Mutual Automobile Insurance Company filed in the Court of Appeals for the Seventh Circuit.

affirmed. In its petition to this Court, Quality Auto has limited its claim against State Farm to the contention that the court of appeals erred by analyzing State Farm's alleged agreements with individual repair shops under the rule of reason. Petitioner does not seek review of the decision that the alleged vertical agreements are lawful under the rule of reason. It only asks that the "agreements" be declared *per se* illegal.[3]

A. Estimating Repair Costs

State Farm is engaged in the business of automobile insurance, including processing and adjustment of property damage claims of insureds and claimants. (Supp. App. 23). State Farm has a service center in Villa Park, Illinois, near Quality Auto's shop. (Hoyert Aff. at ¶ 1, Supp. App. 69).

The facts with respect to State Farm's claims practices are undisputed. In the exercise of its independent business judgment, State Farm has developed automobile claims handling procedures designed to provide its insureds with maximum service at the lowest possible cost by paying in full every just claim, avoiding exaggerated claims, and relying on free competition to establish the fair value of automobile repair costs. (Hoyert Aff. at ¶ 5, Supp. App. 72).

Estimators appraise property damage to a vehicle on an appraisal form by evaluating the vehicle parts damage, the parts which need to be replaced, the price of those parts, the number of hours reasonably necessary for the repairs, and the prevailing competitive hourly rate which State Farm will pay on behalf of the insured, pursuant to its obligation under the contract of insurance, to have the necessary repairs made. The appraisal form is then furnished to the claimant. (Hoyert Aff. at ¶ 13, Supp. App. 76-77).

State Farm does not order or authorize repairs or specify garages at which repairs must be made. It recognizes and

---

[3] Petitioner has abandoned the contentions asserted below that the defendant insurers were participants in a horizontal price-fixing scheme and that defendant insurers have boycotted Quality Auto.

respects the right of a car owner to select the garage of his choice, but will only pay what is reasonable or necessary to fulfill the terms of the applicable insurance coverage. (Hoyert Aff. at ¶ 5, Supp. App. 72).

B. Garage Surveys

The prevailing competitive prices used by State Farm estimators are determined by periodic surveys which are conducted by State Farm personnel. By making a garage survey of all of the garages in a local geographical area, State Farm ascertains the prevailing competitive prices based upon the labor rate charged and the parts discount offered by a substantial number of the shops which have been contacted. A garage directory is then assembled which lists the names and addresses of all the repair facilities surveyed in the particular area and specifies the labor rates and parts discounts charged by each shop. Such garage surveys are conducted solely by and for State Farm, and form the sole basis for the determination by State Farm of the prevailing competitive prices for parts and labor. (Hoyert Aff. at ¶ 9, Supp. App. 74).

State Farm's Villa Park Service Center services a multi-county area, including Westmont, Illinois, where Quality Auto is located. At the time the parties' motions for summary judgment were filed, the prevailing competitive labor rate in the area serviced by the Villa Park Service Center, as determined by a garage survey in 1979, was up to $14.00 per hour. (Hoyert Aff. at ¶ 12, Supp. App. 76). Quality Auto was one of the few shops in the entire area whose hourly labor rate exceeded the prevailing competitive price. (Hoyert Aff. at ¶ 12, Supp. App. 76). By the time Quality Auto filed this lawsuit in August of 1979, it had increased its labor rate from $16.00 to $20.00 per hour. (Orrico Dep. at 20, Supp. App. 85).

The survey also indicated that over 70% of the shops surveyed offered some discount—up to 15%—off the manufacturer's suggested list price for new parts on domestic cars. Quality Auto was one of the few shops in the area which offered no such discount. (Hoyert Aff. at ¶ 12, Supp. App. 76).

C. No Preferred Shops

State Farm does not prohibit its policyholders or claimants from doing business with Quality Auto or any other garage. (Hoyert Aff. at ¶ 13, Supp. App. 76-77). Indeed, Quality Auto's president conceded that between 30 and 40% of Quality Auto's business is accounted for by State Farm claimants and policyholders. (Orrico Dep. at 293, Supp. App. 147).

Any garage is free to negotiate with State Farm for modifications in the State Farm appraisal and, if a repair shop challenges the nature or scope of the estimated repairs listed on the State Farm estimate, a State Farm estimator may modify his appraisal. (Hoyert Aff. at ¶ 13, Supp. App. 76-77).

When a car owner has no preference and requests that State Farm recommend a repair shop, the estimator provides the owner with the names of several conveniently located repair shops which charge no more than the prevailing competitive prices. When a car owner claims that the cost of necessary repairs will exceed the appraisal, State Farm is required under regulations of the Illinois Department of Insurance to provide him with the names of garages which will perform repairs at the price stated in the appraisal. (Hoyert Aff. at ¶ 14, Supp. App. 77; Illinois Department of Insurance Regulation 9.19).

REASONS FOR DENYING THE WRIT

I.

The Court of Appeals and the District Court Properly Analyzed the Alleged Vertical Agreements Under the Rule of Reason.

Quality Auto contends that the court of appeals erred by analyzing State Farm's claims handling practices under the rule of reason, rather than deeming the alleged vertical arrangements *per se* illegal under the antitrust laws. Indeed, Quality

Auto goes so far as to contend that this Court should not grant certiorari unless it believes that arrangements such as the alleged vertical arrangements in this case should be deemed *per se* illegal. (Pet. at p. 14). Conversely, Quality Auto urges this Court that "[i]f it believes that the practices of the carriers under each provider agreements [sic] must be examined to determine whether individual practices, on balance, have a negative impact on competition [,] certiorari ought to be denied." (Pet. at p. 14).

Had the court of appeals or the district court subjected the alleged provider agreements to *per se* analysis, it would have acted in defiance of overwhelming precedent. Contrary to Quality Auto's contention, both of the courts below acted in a manner entirely consistent with Supreme Court precedent when they analyzed the alleged vertical provider agreements under the rule of reason. In *Continental T.V., Inc.* v. *GTE Sylvania, Inc.*, 433 U. S. 36 (1977) (overruling *United States* v. *Arnold Schwinn & Co.*, 388 U. S. 365 (1967)), this Court unequivocally ruled that vertical agreements other than resale price maintenance agreements must be scrutinized under the rule of reason. In so ruling, the Court noted that "[s]ince the early years of this century a judicial gloss on [the] statutory language [of Section 1 of the Sherman Act] has established the 'rule of reason' as the prevailing standard of analysis," and reiterated the longstanding antitrust principle that "[*p*]*er se* rules of illegality are appropriate only when they relate to conduct that is manifestly anticompetitive." *Id.* at 49-50. Moreover, in recent years this Court has refused to hold that even arrangements which literally fix prices are *per se* illegal, when the Court is unfamiliar with the business practice in question and the impact of the arrangement on competition is unclear. "[I]t is only after considerable experience with certain business relationships that courts classify them as *per se* violations . . ." *Broadcast Music, Inc.* v. *Columbia Broadcasting System, Inc.*, 441 U. S. 1, 9 (1979), *citing United States* v. *Topco Associates, Inc.*, 405 U. S. 596, 607-608 (1972).

No court which has addressed the antitrust consequences of agreements between insurers and third party providers, such as the alleged vertical agreements in this case, has held such agreements to be *per se* illegal under the antitrust laws. *See e.g., Proctor* v. *State Farm Mutual Automobile Insurance Company,* 406 F. Supp. 27 (D.D.C. 1975), *aff'd,* 561 F. 2d 262 (D. C. Cir. 1977), *vacated and remanded,* 440 U. S. 942 (1979), *on remand,* 1980-81 Trade Cases [CCH] ¶ 63,591 (D. D. C. 1980); *Nationwide Mutual Insurance Company* v. *Automotive Service Councils,* 1981-1 Trade Cases [CCH] ¶ 63,958 (D. Del.); *Sausalito Pharmacy, Inc.* v. *Blue Shield of California, Inc.,* 1981-1 Trade Cases [CCH] ¶ 63,885 (N. D. Cal.); and *Medical Arts Pharmacy of Stamford, Inc.* v. *Blue Cross & Blue Shield of Connecticut,* 518 F. Supp. 1100 (D. Conn. 1981). As the court stated in *Travelers Insurance Co.* v. *Blue Cross of Western Pennsylvania,* 481 F. 2d 80, 84 (3rd Cir.), *cert. den.* 414 U. S. 1093 (1973), in its evaluation of an agreement between an insurer and hospitals which provided services to insureds:

> Our section 1 analysis begins with the recognition that the situation here does not involve a vertical restraint which has achieved garden variety status. That is, it is not a tie-in, an exclusive dealing arrangement, etc. Consequently, as the district court indicated, it must be carefully looked at on its own facts, in order to reveal whether any restraint of trade it causes is "reasonable." *See Northern Pacific Railway Co.* v. *United States,* 356 U. S. 1, 4-5, 78 S. Ct. 514, 2 L. Ed. 2d 545 (1958); *cf. Chicago Board of Trade* v. *United States,* 246 U. S. 231, 238, 38 S. Ct. 242, 62 L. Ed. 683 (1918).

Petitioner mistakenly contends (Pet. at pp. 8-9) that the court of appeals' decision is inconsistent with the rulings of this Court in *United States* v. *Masonite Corp.,* 316 U. S. 265, *reh. den.* 316 U. S. 713 (1942), *United States* v. *Socony-Vacuum Oil Co.,* 310 U. S. 150, *reh. den.* 310 U. S. 658 (1940), and *Dr. Miles Medical Co.* v. *John D. Park & Sons Co.,* 220 U. S. 373

(1911). These cases lend no support to petitioner's contention that the alleged vertical provider agreements should not be analyzed under the rule of reason. In *Masonite*, the Court held that horizontal agreements between a manufacturer of hardwood and certain of its competitors to fix the price at which the competitors could sell their products to customers was *per se* illegal. Similarly, in *Socony-Vacuum*, the Court deemed illegal a horizontal agreement among several major oil companies to buy up "distress" oil produced by independent jobbers and to market it through their own jobbers. *Quality Auto* involves no such horizontal agreements among competitors.

In *Dr. Miles*, this Court held illegal a vertical resale price maintenance agreement pursuant to which a manufacturer sought to dictate minimum prices at which its product would be distributed by wholesalers and retailers. This case, unlike *Dr. Miles*, involves no such effort to dictate resale prices, but instead involves the refusal of a purchaser to pay more than prevailing competitive prices for goods and services.

Far from being the type of arrangement which courts have subjected to *per se* analysis, the alleged vertical agreements at issue in this case are instead the kinds of arrangements which courts have consistently sanctioned. This Court has traditionally embraced the long-standing antitrust principle that Section 1 of the Sherman Act does not restrain a party from unilaterally determining the parties with whom it will deal, and the terms on which it will transact business.

> In the absence of any purpose to create or maintain a monopoly, the Sherman [A]ct does not restrict the long recognized right of a trader or manufacturer engaged in an entirely private business, to freely exercise his own independent discretion as to the parties with whom he will deal; and, of course, he may announce in advance the circumstances under which he will refuse to sell.

United States v. *Colgate & Co.*, 250 U. S. 300, 307 (1919).

II.

The Decisions Below Do Not Conflict With Any Other Known Decision.

A. The Decisions Below Do Not Conflict With This Court's Ruling in *Group Life & Health Insurance Co.* v. *Royal Drug.*

Petitioner erroneously suggests that the holdings of the court of appeals and district court are inconsistent with *Group Life & Health Insurance Co.* v. *Royal Drug,* 440 U. S. 205, *reh. den.* 441 U. S. 917 (1979), and that *Royal Drug* mandates a finding that the manner in which State Farm processes insurance claims constitutes a *per se* violation of the antitrust laws. Even a brief analysis of *Royal Drug* reveals the error in this position. As correctly noted in both decisions below, *Royal Drug* did not purport to determine whether agreements between insurers and third party providers violate the antitrust laws. (Pet., App. A, p. 6a, App. B, pp. 18a-19a).

In *Royal Drug,* the defendant insurer, Blue Shield, had entered into written pharmacy agreements with favored pharmacies whereby each participating pharmacy agreed to charge a Blue Shield policyholder $2.00 for each prescription in exchange for Blue Shield's agreement to reimburse the participating pharmacy for the cost of the drug. The plaintiffs, non-participating pharmacies, alleged that the pharmacy agreements were not the "business of insurance" within the meaning of § 2(b) of the McCarran-Ferguson Act, 15 U. S. C. § 1011 *et seq.,* and therefore were not exempt from examination under the antitrust laws.

Although this Court held that the pharmacy agreements were not exempt from antitrust scrutiny under the McCarran-Ferguson Act, it also explicitly stated that it was not expressing any opinion on the antitrust implications of the pharmacy agreements: "Whether the Agreements are *illegal* under the antitrust laws is an entirely separate question, not now before

us." *Group Life & Health Insurance Co.* v. *Royal Drug Co.*, 440 U. S. at 210.[4] The Court even went on to acknowledge, in footnote 5, that arrangements not exempt from antitrust scrutiny could nonetheless be legal:

> It is axiomatic that conduct which is not exempt from the antitrust laws may nevertheless be perfectly legal. The United States in its *amicus* brief urging affirmance has taken the position that the Pharmacy Agreements probably do not violate the antitrust laws, though recognizing that that issue is not presented here.

Id. at 210.

B. The Decisions Below Are Consistent With Every Known Decision Which Has Subjected Similar Conduct to Antitrust Scrutiny.

The court of appeals, and the district court, assumed for the purposes of the parties' pending summary judgment motions that there existed certain vertical agreements between each defendant insurer and certain "preferred" repair shops.[5] The courts below went on to evaluate these "agreements" under the rule of reason, and determined that they were simply arrangements between buyers and sellers regarding the price

---

[4] Although petitioner quotes at length from the decision of the Court of Appeals for the Fifth Circuit in *Royal Drug* in support of its contention that the alleged vertical agreements in this case are *per se* illegal (Pet. at pp. 10-12), petitioner's reliance on that case is as misplaced as its reliance on this Court's decision in *Royal Drug*. The sole issue addressed by the Court of Appeals for the Fifth Circuit was identical to the issue resolved by this Court—whether the pharmacy agreements in question were exempt from antitrust scrutiny under the McCarran-Ferguson Act. *Group Life & Health Insurance Co.* v. *Royal Drug*, 556 F.2d 1375 (5th Cir. 1977).

[5] Quality Auto misquotes Judge Decker's opinion when it attributes the following statement to him—"Vertical arrangements between the insurer and body shop exist." (Pet., at p. 8). What Judge Decker instead stated was:

(footnote continued on the following page)

which the buyer would pay for a seller's services.[6] The courts below correctly applied settled antitrust principles to the insurance claims practices in question and reached a conclusion which is fully in accord with all reported decisions on the issue.

Every court which has analyzed the refusal of insurance companies to pay more than the prevailing competitive hourly rates for automobile repairs, like the court of appeals in *Quality Auto,* has found such conduct to be perfectly lawful under the antitrust laws. Thus, in *Proctor* v. *State Farm Mutual Automobile Insurance Company,* 406 F. Supp. 27 (D. D. C. 1975), *aff'd,* 561 F. 2d 262 (D. C. Cir. 1977), *vacated and remanded,* 440 U. S. 942 (1979), *on remand,* 1980-81 Trade Cases [CCH] ¶ 63,591 (D. D. C. 1980), the district court, on remand, held that alleged "vertical arrangements" between defendant insurers and certain auto repair shops who had agreed to perform repairs at the prevailing labor rate simply "[did] not offend the anti-trust laws." *Proctor,* 1980-2 Trade Cases [CCH] ¶ 63,591 at 77,140. In granting summary judgment for the defendant insurers, the court noted:

> It is well to remind ourselves that a principal purpose of the anti-trust laws is to preserve and foster competition in the market place. Appellants' basic thrust that insurance companies must write estimates of repair costs so as to be

---

(footnote continued from the previous page)

> . . . [v]iewing the facts in the light most favorable to the plaintiff, the court will, for the purposes of this motion, assume that informal vertical arrangements between the defendants and certain "preferred" body shops exist.

(Pet., App. A, p. 7a).

[6] All the direct, uncontradicted evidence in the record demonstrates the absence of any such agreements between State Farm and any individual repair shops. This absence of proof of agreement in itself provides ample support for the decisions below. Moreover, the absence of evidence of agreement in the record makes it clear that neither the conduct under scrutiny in this case nor the decisions below present an "important question of federal law which has not been settled." (Pet. at p. 7).

> within the prices sought by high-priced non-competitive shops clearly runs counter to these anti-trust principles. [Citations omitted].

Id. at 77,141. The other reported decisions addressing such issues have likewise awarded summary judgment to the defendant insurers. *See Workman* v. *State Farm Mutual Automobile Insurance Company,* 520 F. Supp. 610 (N. D. Cal. 1981), (where court rejected plaintiffs' contention that provider agreements between insurers and repair shops evidenced conspiracy to fix prices); *Chick's Auto Body* v. *State Farm Mutual Automobile Insurance Company,* 168 N. J. Super. 68, 401 A. 2d 722 (1979), *aff'd per curiam,* 176 N. J. Super. 320, 423 A. 2d 311 (1981), (where the court rejected flatly plaintiffs' charges that the insurers' refusal to pay more than the prevailing rate for labor constituted price-fixing); and *Nationwide Mutual Insurance Company* v. *Automotive Service Councils,* 1981-1 Trade Cases [CCH] ¶ 63,958 (D. Del.), and *DeBonaventura* v. *Nationwide Mutual Insurance Company,* 419 A. 2d 942 (Del. Ch. 1980), *aff'd,* 428 A. 2d 1151 (Del. Super. 1981) (where federal and state courts affirmed the right of automobile insurers to minimize their expenses by seeking to pay no more than "competitive" prices for auto repairs). *See also Travelers Insurance Co.* v. *Blue Cross of Western Pennsylvania,* 481 F. 2d 80 (3rd Cir.), *cert. den.* 414 U. S. 1093 (1973), (where court upheld the validity under the antitrust laws of Blue Cross' practice of providing less favorable reimbursement terms to hospitals which declined to enter into its standard contracts prescribing the amounts and terms under which Blue Cross would pay for services rendered to subscribers); and *Sausalito Pharmacy, Inc.* v. *Blue Shield of California, Inc.,* 1981-1 Trade Cases [CCH] ¶ 63,885 (N. D. Cal.), and *Medical Arts Pharmacy of Stamford, Inc.* v. *Blue Cross & Blue Shield of Connecticut,* 518 F. Supp. 1100 at 1109 (D. Conn. 1981), (where the courts upheld the legality under the antitrust laws of

prescription drug plans which specified the terms under which a participating pharmacy was to provide prescription drugs to Blue Cross' subscribers, reasoning that the antitrust laws do not prohibit an insurer from using its market position " 'to get the best deal possible' for its subscribers absent some showing of anticompetitive conduct.")

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

WILLIAM A. MONTGOMERY
7200 Sears Tower
Chicago, Illinois 60606
(312) 876-1000
Counsel for Respondent State Farm Mutual Automobile Insurance Company

Of Counsel:

MARCI A. EISENSTEIN
SCHIFF HARDIN & WAITE
7200 Sears Tower
Chicago, Illinois 60606

Dated: February 23, 1982

APPENDIX OF RELEVANT STATUTES AND REGULATIONS

Section 1 of the Sherman Act, 15 U.S.C. § 1

Section 1 of the Sherman Act, 15 U.S.C. § 1, provides in relevant part:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal . . .

Sections 1012(b) and 1013(b) of the McCarran-Ferguson Act, 15 U.S.C. § 1011 *et seq.*

Section 1012(b) of the McCarran-Ferguson Act, 15 U.S.C. § 1012(b), provides in relevant part:

> No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided*, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act . . . shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

Section 1013(b) of the McCarran-Ferguson Act, 15 U.S.C. § 1013(b), provides in relevant part:

> Nothing contained in this chapter shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

Illinois Department of Insurance
Regulation 9.19, ¶ 14

Prior to August 3, 1979, Illinois Department of Insurance Regulation 9.19, ¶ 14 provided in relevant part:

> 14. If partial losses are settled on the basis of a written estimate prepared by or for the company, the company shall supply upon request of the insured, a copy of the estimate upon which the settlement is based. The estimate prepared by or for the company shall be reasonable, in accordance with applicable policy provisions, and of an amount which will allow for repairs to be made in a workmanlike manner. If the insured subsequently claims, based upon a written estimate he obtains, that necessary repairs will exceed the written estimate prepared by or for the company, the company shall review and respond promptly in writing to the insured in regard to his written estimate and provide the insured with the name of a repair shop or contractor that will make the repairs in a workmanlike manner . . .

Illinois Department of Insurance
Regulation 9.19, ¶ 7C

Since August 3, 1979, Illinois Department of Insurance Regulation 9.19, ¶ 7C has provided in relevant part:

> 7C. If partial losses are settled on the basis of an estimate prepared by the company, or on the basis of any estimate prepared at the company's direction, regardless of the actual source of that estimate, the company must supply the insured or claimant with a copy of the estimate upon which the settlement is based. The company must supply the insured or claimant with the name of a repair shop that will effect repairs within the amount of settlement. If the company is not able to provide the name of such a repair shop, and reasonable additional costs for repair or replacement are incurred, the amount of these costs in excess of the company's appraisal price shall be at the expense of the company.